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Public Control of Private Military

A thesis submitted in partial fulfilment of the requirements for the
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Abstract

Private military force must have a fully informed regulatory and legislative oversight if it is to be a useful and controllable tool for states' management of their political affairs. Today, this requires citizens to be fully aware of and engaged in their state's military arrangements. Contemporary concerns that animate debates surrounding the prodigious employment of private military contractors by certain modern liberal democracies largely reflect the lessons of history. Private force has not been a consistently contentious issue throughout much of Western history and a periodic assessment of their exploits can productively instruct citizens in their current use. History suggests that control of private military force is maximised by an informed coalition of cooperative and engaged participants that includes public citizens, their principals, and the private agents. Given incentive and oversight, they can be shown to have advantage in achieving certain security and defence objectives. Lack of competent citizen-control mechanisms often results in disorder as public and private motivations and objectives compete. Scrutiny of selected private-military histories can assist in informing what will constitute effective control over private military force in a contemporary paradigm. Refusal to recognise the exemplars offers the potential to see past mistakes repeated, to the peril of existing citizen rights and duties. As the proliferation of private military actors is unlikely to recede, given their persistent attendance alongside various human endeavours, identifying and leveraging the successes and failures of control from historical examples is prudent in order to further inform contemporary citizen's democratic decisions about their state's military affairs.

Introduction

Private military force has experienced a chequered history and can be shown in both positive and negative lights, depending on context and paradigm. This work traverses several political, social, and economic eras but one issue is consistent throughout history and remains so today: inability or failure to effectively control private military actors in the domain where their goods are supplied is manifestly unwise and should be carefully attended to. In a contemporary setting, assuming that the publicly audited control mechanisms that constrain public militaries are also operative and enforceable upon private military actors is mistaken and will likely result in eventual failure or corruption of the goods contracted for.

A private military actor is an independent agent employed to distribute military or security goods for reward.¹ They have been variously described through the ages as mercenaries, privateers, soldiers of fortune and private contractors. For ease, the common-use name will be employed contemporaneously with the period under scrutiny.

The contemporary issues concentrated upon are, for the most part, centred around the political, legal and economic control instruments that civil society expects to restrain public militaries, with normative ethics underpinning these features. However, throughout the work it would be hazardous to equate all previous political, economic, ethical or ideological paradigms with the current context. As such, relevant circumstance of the period concerned will therefore be given to illustrate an era's normative features. Historically, not all issue elements have been accurately or diligently recorded. The post-industrial era is arguably where literary efforts have collectively synthesised them into a cogent and recognisable form, occurring in the context of Western liberal democracies.

¹ Leander, Anna. 'The Paradoxical Impunity of Private Military Companies: Authority and the Limits to Legal Accountability.' *Security Dialogue*, Vol. 41, No. 5 (October 2010), p. 472

Underlying issues that are of relevance to modern citizen engagement will be presented first to provide a context for discerning what amounts to control within the Western paradigm. Five case studies follow beginning with the Ancient Greeks, followed by the early Renaissance, the age of Privateering, the latter twentieth century and the early twenty-first. The selected case studies illuminate a success trend when increased public participation in the control of, and the goods generated by, private military force is present. The necessity of military professionalism coupled with integrity by the private military actors also present as attendant elements essential to a success trend. In cases where there is a persistent disconnect between the citizen, the state and their private agents, and the proffered security goods, chaos is a common result.

Universally consistent issues surrounding the use of private force are often difficult to isolate as the literary narrative has transitioned through various political, legal and moral paradigms. Success is also a complicated outcome to contextualise and is largely measured in civil, political, economic or strategic terms. A predominantly qualitative methodology is employed with quantitative elements appearing as sources allow.

Some consideration must be directed toward terms. It will be noticed as the issues are outlined, definitions and taxonomy form part of the scholarly debate. It must be accepted that working parameters are employed in this work to avoid academic paralysis. The expression ‘mercenary’ in contemporary use is usually pejorative and commonly associated with the types of activities described later in Chapters 3 and 5. That is, a mercenary is characterised by two main features; they are foreign and have no national association with any of the belligerents party to the conflict, and they nominate

financial gain as a primary motivation for their contractual involvement.² A further aspect, and one of compelling importance to this work, is that mercenaries are differentiated from other fighters in the degree of authoritative control they are under.³ Any of the employed terms cannot be considered definitive, as later treatment here will show, and are used mainly as working definitions to give theoretical separation from the other types of private military actors presented.

Contemporary professional private security companies (PSCs) are enterprises that perform contracted functions such as training, intelligence gathering, logistics support, security, and risk analysis. They work for multiple employers on the open market and emphasise their corporate structure. The companies' individual contractors are sourced from extensive databases of ex-military and law enforcement personnel; supposing that a degree of personal integrity and professional skill is usually, but not always, evident.⁴ Traditionally associated with domestic in-state functions they have now become an integral part of state military or organisational operations out-of-state.

Private military companies (PMCs) are business enterprises very similar to PSCs and as the descriptor suggests, have oriented themselves toward services typically the province of government armed forces and can provide three categories of goods. First, combat-capable military force. The South African company, Executive Outcomes (given exposure in Chapter 5), would exemplify this, having operated in Africa during the 1990s. There are no PMCs now operating (overtly) at this level. Second, military consultancies that provide training and advisory services. Some have expanded their sphere to include the armed functions of bodyguards and personal security, such as the now infamous Blackwater Worldwide company from the 2003 Iraq War. Many firms of

² Percy, Sarah V. 'This Gun's for Hire: A New Look at an Old Issue.' *International Journal*, Vol. 58, No. 4 (Autumn 2003), p. 722; O'Brien, Kevin A. 'What should and what should not be regulated?' *From Mercenaries to Market*. Simon Chesterman & Chia Lenhardt (eds). Oxford University Press, Oxford, 2007, pp. 35-36.

³ Percy (2003), p. 727

⁴ Avant, Deborah. 'Mercenaries.' *Foreign Policy*, No. 143 (July-August 2004), p. 21

this type are operating in Iraq and Afghanistan currently. Third, military support companies whose activity is centred on nonlethal aid and assistance. This includes weapons maintenance, explosive ordnance disposal, technical support, and data collection and analysis. Recently in Iraq, protective services have been added to their business repertoire.⁵ When making reference to the modern collection of private military and security actors the term private military contractor (PMC) is generically employed for descriptive ease in this work. This acknowledges that the private entities are outside of a public national military and domestic security apparatus. The United States is the most frequently referenced example in accordance with their premier employer status.

Beginning with the basis of a normative Western approach to the provision of military and security goods, the first chapter covers current concerns that persist around the use of private military contractors as replacements for national armed forces. As such, the chapter serves to underpin many observations made in the subsequent case studies. It additionally gives an indication of why citizens might reasonably assume that control of private military actors is analogous to their public military counterparts. Care is taken not to arbitrarily impose contemporary norms upon historically distant examples and substituting for this where possible is social, economic and political detail in Chapters 2 – 5.

The Ancient Greek study presents as a foundation for the Western world's democratic and normative beginnings of organised civil/military affairs. It suggests what may transpire in a contemporary setting if private military actors were given unregulated access to the provision of public security goods. It serves as a cautionary account for the present-day citizen. A motivated Greek citizenry, when engaged by a

⁵ Isenberg, David. 'The Good, the Bad, and the Unknown: PMCs in Iraq.' Workshop presentation in cooperation with Bonn International Center for Conversion (BICC), Bonn, Germany, February 9-10, 2006. pp. 7-8.

rudimentary democratic process that exercised limited control over their military affairs, saw civil stability temporarily spread within the Greek world. Unable to sustain this control, it did not endure. The concluding Spartan effort to retain an elementary influence over external private military adventures, is a revealing illustration. It serves to demonstrate that even in antiquity, the control over private military activities by a political authority was not just assumed, but was subject to cautionary regulation and oversight.

The paradigm shift from feudal armies to large scale mercenary and *condottieri* use on the Italian peninsula in the early Renaissance is backlit by historical narrative to provide a normative context in the absence of extensive military sources. It indicates that the early Renaissance provided a fertile growth medium for enthusiastic private military adventurers employed by competing ideologues, individuals and cities. This did not translate into extensive civil security for the Italian city-states, whose citizens were subject to prolonged predations by their own security agents as the principal/agent relationship became reversed. This saw citizens, who were supposed to be the beneficiaries of the contracted security and defence goods, lose control of their private military agents. Failure to offer a collective security presence finally encouraged a foreign military incursion and brought the *condottieri* period to an end, something that the assumption of control by fiscal and market means alone, could not.

A largely positive management and regulatory control trajectory is exhibited in the gradual development of state-directed private maritime force, or privateering, and is an indication that private military could serve useful sea-borne military functions when immature states had decreased military capacity. The development of public participation in the economic, defence, and security goods generated by state-sponsored privateering became a key element in its prolonged success. The contrast between the pedestrian and bureaucratic early English approach and the later, more pragmatic

American experience is informative in outcomes and approach to regulation. Indeed, the effectiveness of private maritime force was so persuasive that it was eventually seen as a threat to the wealthy new sovereign states emerging in the post-Westphalian era and was consequently outlawed. This does not diminish its instructiveness.

The West Africa case study illustrates two polarities of public control in the use of private military force. Before the termination of the Cold War, mostly unsavoury mercenaries were employed to pursue the covert agendas of belligerent post-colonial international powers with often tragic results; the provision of citizens' security goods being neglected. Post Cold War employment of newly professionalised private military companies showed that it was possible to expeditiously achieve limited military and security objectives when international lassitude prevailed; the provision of citizens' security goods being pursued. This period heralded a renewed interest in private military employment. Additionally, it marks the twilight of traditional mercenarism and the dawn of modern, professional private military actors.

The 2003 Iraq invasion was, in part, facilitated by a large scale replacement of regular armed forces with private military and security actors. The use of these private agents has animated discussions concerning the difficulties of having civilians in a military, operational environment. As indicated from several of the case studies, a persisting and significant concern for states and citizens is the extent to which private military contractors are, or can be, controlled in conflicts beyond their borders. This has arisen from an inability of domestic or international legal instruments to produce effective punitive measures in the event of contractor, or contractual, malfeasance. The legal lacuna is an indication of citizen ignorance which then encourages subsequent policy fissures. Further, the distance that these inequities produce between public citizens and the normative engagement processes of democratic states has unfavourable consequences for current civil/military relations and the rights and duties associated

with this relationship. Much of the modern social, economic and political context is ignored in expectation of the reader's familiarity with such.

Chapter 1

Underlying Issues

'...in the councils of government we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex.'

Dwight D. Eisenhower.¹

Private military have operated almost continually throughout history but it is really only since the 1648 Treaty of Westphalia and the change from monarchical rule to a sovereign nation-state paradigm, that scholarly efforts have been directed toward issues that herald and follow their activities. Of interest here are the normative ethics and control of legitimate state-monopoly political violence, international control of privatised violence, and the threat to states' civil/military relations. To limit the scope and narrow the focus of this chapter, the issues context is confined to contemporary Western democratic governments as monopoly providers of public security goods.²

It has long been asserted that a social contract exists between the citizen and the state and a key objective of this is the provision of security, without which: 'the life of man [is] solitary, poor, nasty, brutish and short.'³ The characteristics of this assumed contract have altered over the centuries as have the actors: tyrant and oppressed, monarch and subject, state and citizen, for example. The relevance to present circumstances is that there remains operable a symbiotic social contract between citizens, who agree to relinquish their natural right to use violence for their private protection, and a collective authority they have chosen to confer that right upon.⁴

¹ From his final presidential address, January 17, 1961. In Carafano, James Jay. *Private Sector, Public Wars*. Praeger Security International, London, 2008. pp. 3-4.

² Minow, Martha. 'Outsourcing Power: How Privatizing Military Efforts Challenges Accountability, Professionalism, and Democracy.' *Boston College Law Review*, Vol. 46, Issue 5, No. 5 (9-1-2005), p. 997; and Max Weber's work: *Political Writings*. P. Lassman and R. Spears (eds). Cambridge University Press, Cambridge, 1994, pp. 310-311.

³ Hobbes, Thomas. *Leviathan*. R. Tuck (ed), Cambridge University Press, Cambridge, 1991, p. 89

⁴ Krahnemann, Elke. *States, Citizens, and the Privatization of Security*. Cambridge University Press, Cambridge, 2010. p. 22

The intrusion of private security and military operators into the modern nation-state's traditional monopoly over military resources and legitimate political violence has generated vigorous scholarly interest. Contrarily and to its peril, the unregulated renaissance of state military-agent privatisation has by and large been overlooked by the general public. Much academic debate about the exploitation of private force by certain states on the international stage is persistent, ongoing and currently unresolved but a loose consensus is apparent: private military contractors are now an embedded feature of the globalised world.⁵ This is in contrast to the post-1648 Westphalia Treaty paradigm that saw a change from monarchies to sovereign states and subsequently, security goods were supplied to citizens by a single, governing authority. In this paradigm, citizens exerted influence over their state's military arrangements by engaging in normative rights and duties. The most recent example of extensive private military use was seen in the US-led 2003 Iraq occupation and much of the contemporary literary traffic relates to this event and the latent implications. Chapter 6 gives further exposure to these.

The re-emergence of the private military phenomenon demands appropriate attention as failure to do so potentially threatens to disrupt some normative features of contemporary Western society. There are multiple implications spread across many disciplines but the issues may be corralled into three general arenas: the ethical, the political and legal.⁶ An audit of normative ethical issues is conducted first as they serve as a foundation for states' trends in policy and law.

⁵ Representative are: Singer, P. W. *Corporate Warriors*. Cornell University Press, Ithaca, 2003, p. 242; Chesterman, Simon., and Fisher, Angelina (eds). *Private Security, Public Order*. Oxford University Press, Oxford, 2009, pp. 222-226; Carafano, p. 183; Avant, Deborah D. 'Contracting for Services in US Military Operations.' *Political Science and Politics*, Vol. 40, No. 3(July 2007), p.459

⁶ Representative are: Singer, P. W. 'Outsourcing War.' *Foreign Affairs*, Vol. 84, No. 2 (March-April 2005), pp. 119-120; Percy, Sarah V. 'This Gun's for Hire: A New Look at an Old Issue.' *International Journal*, Vol. 58, No. 4 (Autumn 2003), pp. 721-722; United States Government Accountability Office. 'Warfighter Support.' *Report to Congressional Committees*, GAO-10-472, GAO, Washington DC, March 2010, pp. 34-38.

In order to understand why it is important to control the use of private force, a brief explanation of how legitimate political violence becomes normative is necessary. The war convention crystallised out of the ‘articulated norms, customs, professional codes, legal precepts, religious and philosophical principles and reciprocal arrangements that shape our judgements of military conduct’.⁷ This approach is not uncontroversial and an opposing view is that the war convention must be understood and utilised from an evolutionary, historical perspective.⁸ To avoid becoming mired in competing perspectives here, it is accepted that a ‘Just War’ tradition exists and is predominantly concerned with restraining war, legitimating certain types of action and de-legitimising others.

The tradition of Just War Theory in a Western paradigm stretches back some 2,000 years and has coalesced around several core principles. The normative moral reflections separate out into two dominant categories. These are considerations concerning the morality *of* war and morality *in* war. The Latin *jus ad bellum* (the justice of resorting to war) and *jus in bello* (what is the right conduct in war), are the key terms.⁹ While space requires sidestepping the many unresolved philosophical problems that these theories present, a working knowledge of the parameters is useful to show why private military force potentially threatens some of the general principles.

Ideally, state rights reflect those which the citizens have agreed upon for themselves; ultimately, individual rights to life and liberty. A war begun for the right reasons is, in one analysis, that which responds to aggression: ‘the use of force by one state against the political sovereignty or territorial integrity of another’.¹⁰ The first Iraq War is representative of this: when the US responded to the invasion of Kuwait it was fulfilling one requirement of *jus ad bellum*. Other criteria that demand involvement are:

⁷ Waltzer, Michael. *Just and Unjust Wars*. Basic Books Inc, New York, 1977, p. 44

⁸ Bull, Hedley. ‘Review Article: Recapturing the Just War for Political Theory.’ *World Politics*, Vol. 30, No. 4 (1979), pp. 598-599.

⁹ Bellamy, Alex J. *Just Wars*. Polity Press, Cambridge, 2006, p. 2

¹⁰ Waltzer, p. 62

that war is prosecuted only as a last resort, a proper authority is responsible for publicly declaring hostilities, the right intention animates the responding aggression, there is a reasonable expectation of success, and that the benefits of war are proportional to the costs.¹¹ The second Iraq War of 2003, in contrast, struggled to fit a globally acceptable *jus ad bellum* and continues to aggravate some international *jus in bellum* norms.

It is this second consideration, morality *in* war, that underpins many concerns surrounding the legitimacy of privately contracted force in international conflicts. A historically substantive approach sees legitimacy grounded in an act's conformity to certain rules. These rules may be divinely inspired, based in natural law, or be given approval by authoritative legislators.¹² The rule approach is emphasised here as it best reflects the normative historical antecedents of Western military force deployment that references various ideological, economic, and political strictures.¹³ These are elements that continue to appear in the present debates about contemporary private military use. It is sufficient at this stage to recognise that civil democratic society insists that when war is to be, or is being conducted, there are standards to be maintained.¹⁴

It is claimed the war convention commits followers to maintain three standards of *jus in bello*. The first is one of discrimination: armies must discriminate or distinguish between military and civilian targets, and that lethal force is directed only at military and military supply targets. Second: armies must use proportionate force against legitimate targets. And finally: soldiers are restrained from using actions that would be repugnant to the moral conscience of mankind.¹⁵ Potential contravention of these standards by private military force is pursued further down.

¹¹ Orend, Brian. 'Just and Lawful Conduct in War: Reflections on Michael Waltzer.' *Law and Philosophy*, Vol. 20, No. 1 (January 2001), pp. 1-2.

¹² Bellamy, p. 3

¹³ The profligate historical use of force by both religious and secular authorities highlights this.

¹⁴ Waltzer, pp. 34-35.

¹⁵ *Ibid*, pp. 34-39.

Objections have also been made concerning the motivations of private actors on the battlefield: a fiscal motive for fighting and killing being normatively offensive, for example. The justifiable causes nominated by society for recourse to war and lethal action have varied over time and are usually warranted by attachment to some appropriate cause. These have included the defence or pursuit of national or religious interests and defence of the interests of the sovereign state.¹⁶ Acknowledging the modern abhorrence of an insufficient or invalid motive, Article 47(2)(c) of Protocol I of the Geneva Conventions specifically attaches mercenarism to participation in hostilities for ‘private gain’.¹⁷ It can be observed from the case studies presented in the following chapters that an economic incentive is not orphaned from other motivations required by societal norms. Individuals and politically or religiously organised groups have, while perhaps citing some loftier ideal, made repeated reference to this inducement. Indeed, the justification for the modern proliferation of privatised military and security agents is also couched in financial terms: governments’ desire to improve efficiency and achieve better value for money.¹⁸ It is not clear yet that budgetary parsimony composes a more robust moral motive. As far as actual mercenaries or private contractors are concerned, proving the financial motivation of individuals would be complicated. The influential Diplock Report concluded that any definition relying on positive proof of motivation would ‘either be unworkable or so haphazard in its application as between comparable individuals as to be unacceptable’.¹⁹

Another moral objection to the use of private force hinges on the idea that the contribution of the citizen to military affairs has significant ethical importance in state

¹⁶ Percy, Sarah. ‘Morality and Regulation.’ In Chesterman and Lenhardt (2007), p. 14

¹⁷ At: <http://www.un.org/documents/ga/res/44/a44r034.htm> . Accessed: 15/07/10

¹⁸ Sheehy, Benedict., Maogoto, Jackson., and Newell, Virginia. *Legal Control of the Private Military Corporation*. Palgrave Macmillan, New York, 2009, p. 2

¹⁹ Burmester, H.C. ‘The Recruitment and Use of Mercenaries in Armed Conflicts.’ *The American Journal of International Law*, Vol. 72, No. 1 (January 1978), p. 37; Percy (2006), p. 43.

affairs.²⁰ According to this argument, a military relationship between citizen and state results in constraint by the state in the use of armed force and therefore the reach of the state. War initiated by the state is made difficult by an army comprised of its citizens and internal rebellion quashed by a citizen army is made more complicated.²¹ Tyranny would be also avoided by an army recruited from and at one with, the people (this is given coverage in the following chapter). Private fighters, it is claimed, interrupt the citizen force ideal by allying themselves with an employer, not the community whose purpose is supposedly oriented toward a common public good.²²

Whether or not these moral claims are valid is not of primary concern at this juncture. What is, is that the normative military arrangements for post-Westphalian, Western liberal democracies are based on the idea that a state's military *is* constrained by a morally normative, democratically engaged, informed citizen electorate that also comprises the national forces.²³ The large scale privatisation of military function challenges this control paradigm.²⁴

Given that states' military arrangements reflect the ethical norms of the citizens therein, it would follow that the regulatory mechanisms that constrain the use of public military force are also imposed upon any private military force contracted by a state. If standards are to be maintained then some type of regulatory framework must be able to provide public oversight and apply punitive measures when necessary. This raises a problem for accepted civil/military ordering because private contractors are essentially civilians who have been given temporary authority to intrude into the state's military realm of operations, potentially making their rights and duties different from regular

²⁰ Singer (2005), p. 125

²¹ Witness the very recent events of social unrest across North Africa.

²² Percy, in Chesterman and Lenhardt, pp. 18-20.

²³ Avant, Deborah and Sigelman, Lee. 'What Does Private Security Mean for Democracy? Lessons from the US in Iraq and Afghanistan.' Paper under Review, (October 2009), p. 2. At: <http://web.international.ucla.edu/cms/files/PrivateSecurityandDemocracy.pdf>. Accessed: 05/09/10

²⁴ Weigley, Russell F. 'The American Military and the Principle of Civilian Control from McClellan to Powell.' *The Journal of Military History*, Vol. 57, No. 5 Special Issue: Proceedings of the Symposium on "The History of War as Part of General History" at the Institute for Advanced Studies, Princeton, New Jersey (October 1993), pp. 27 + 57.

armed forces; prisoner of war status, for example.²⁵ As one of the underlying tenets of the professional purveyor of state monopoly violence is the strict adherence to the normative principles that provide foundation for the laws of war, having privately contracted colleagues alongside who are not so constrained, is vexatious.²⁶

A secondary problem stems from this, in that, if private contractors are state-employed security and military actors in an international arena, what manner of control are they subject to and how is it enforced? Their widespread use by the US and the UK in the 2003 Iraq intervention, and subsequent problems, underscores this concern. Complicating matters is that while there may be contractual approval from a home state authority there is a noticeable absence of effective legislative control, domestic and international, over the contract and contractors.²⁷ Iraqi detainees' abuse at Abu Ghraib prison by US civilian contractors and military staff resulted in no successful prosecutions of the civilians involved and emphasises this reality. This anomaly is accepted by those opposing the substantive approach mentioned above, who see the absence of international governance (and therefore, enforcement) as one reason to deny the legitimacy of internationally binding rules.²⁸

These tensions have seen oversight of internationally deployed private military force enfeebled, also resulting in a relational disconnect between the citizen and the state.²⁹ Exactly what this looks like is difficult to assess, although it has been noted:

²⁵ The Geneva Convention Relative to the Treatment of Prisoners of War does not sanction any criminal penalties against mercenaries. In Gul, p. 292; Also, mercenaries do not benefit from prisoner-of-war-status if captured. In Cameron, Lindsey. 'Private Military Companies: Their Status Under International Humanitarian Law and its Impact on Their Regulation.' *International Review of the Red Cross*, Vol. 88, No. 863 (September 2006), p. 577

²⁶ Hartle, Anthony E. *Moral Issues in Military Decision Making*, (2nd. Ed). University Press of Kansas, Lawrence, USA, 2004, p. 101; Lock, Larry., Lt. Colonel, US Army. 'Is Military Outsourcing Out of Control? US Army War College Research Project, Carlisle Barracks, Pennsylvania, March 2006, p. 12

²⁷ See variously: United States Government Accountability Office, 'Report[s] to Congressional Committees,' Washington DC; GAO-11-1, October 2010; GAO-10-833, July 2010; GAO-10551T, March 17, 2010; GAO-10-472, March 2010; GAO-09-538T, April 1, 2009; GAO-08-966, July 2008; GAO-06-865T, June 13, 2006. The domestic matters are expanded on in Chapter 6.

²⁸ Art, R.J., and Walz, K.N. 'Technology, Strategy and the Use of Force', in *The Use of Force: International Politics and Foreign Policy*, 2nd. Ed., Art and Walz (eds), University Press of America, Maryland, 1983, p. 6. This denial would include the US and the UK governments.

²⁹ Avant (2009), p. 2

In spite of the long tradition of the American military's nearly unquestioning acceptance of civil supremacy and the apparent hardness of the traditional as recently as World War II, it may be that Samuel P. Huntington was correct in his evaluation of the American variety of civil control of the military as a subjective civilian control, perilous because of a relative absence of objective institutional safeguards.³⁰

This indicates that if citizen control of a public military is problematic, then asserting effective oversight upon a private entity would have compounded difficulties when the relocation of public ownership, assets, functions, services and management to private hands occurs.³¹

Of tangential interest at this point is work done elsewhere demonstrating that a 'battlefield effectiveness bonus is a product of many democracies' superior human capital, civil/military relations, and cultural background'.³² One of many views of this is that there is a causal relationship between congenial civil/military relations and democracy that allows wealth and capital accrual. An alternate view is that it is democracy that stimulates non violent civil/military relations.³³ Both are beyond the scope of this work but the observations appear to support an assertion that healthy civil/military relations with democratic controls are important normative features of the contemporary sovereign state.

The issue of private military actors in international conflicts not only dramatises an operational divide between state and citizen but it has also germinated alienation between global institutional actors, and states.³⁴ The institutional rift is apparent in the existing anomaly presented by the United Nations Mercenary Convention, which fails to describe the civilian military contractor phenomenon adequately, and the Organization

³⁰ Weigley, p. 57

³¹ Sheehy et al, p. 2

³² Biddle, Stephen, and Long, Stephen. 'Democracy and Military Effectiveness: A Deeper Look.' *The Journal of Conflict Resolution*. Vol. 48, No. 4 (August 2004), p. 541

³³ *Ibid*, p, 540

³⁴ Gul, Saad. 'The Secretary Will Deny All Knowledge of Your Actions: The Use of Private Military Contractors and the Implications for State and Political Accountability.' *Lewis and Clark Law Review*, Vol. 10, No. 2 (2006), pp. 287-288. As shown by the use of US private military contracting firm MPRI in the Balkan conflict by the US in 1994. This circumvented a UN embargo, also avoiding Congressional and domestic oversight.

of African Unity (OAU) Convention for the Elimination of Mercenarism in Africa which treats the consequence of being a mercenary, differently.³⁵

The term ‘mercenary’ is now anachronistic, vague, and various definitions have failed to be accepted as an international norm, nominally placing individual contractors outside of International Humanitarian Law (IHL), as a definitive legal descriptor is non-existent.³⁶ At least one academic, commenting before the new conventions and protocols were enacted, professed that ‘any mercenary who could not exclude himself from such definitions deserved to be shot – along with his lawyer’.³⁷ The relevant current IHL protocol, United Nations Article 47.2 of Additional Protocol I, stipulates:

A mercenary is any person who:

- (a) is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;
- (c) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
- (d) is not a member of the armed forces of a party to the conflict; and
- (e) has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.
- (f) has not been sent by a state which is not of a Party to the conflict on official duty as a member of its armed forces.³⁸

The definition is viewed as being unworkable owing to the six cumulative conditions that a person must fulfil in order to be considered a mercenary.³⁹ A consequence of this is the ongoing disaffection between the International Council of the Red Cross (ICRC), whose determination that the provision does form part of international customary law, and the United States which does not recognise this notion.⁴⁰ It is of particular relevance

³⁵ Cameron, p. 577

³⁶ Gul, p. 292

³⁷ Best, Geoffrey. ‘Humanity in Warfare.’ *The Modern History of the International Law of Armed Conflicts*, 383 n.83 (1980).

³⁸ United Nations International Convention against the Recruitment, Use, Financing and Training of Mercenaries. At: <http://www.un.org/documents/ga/res/44/a44r034.htm>. Accessed: 20/11/10

³⁹ Cameron, p. 578. C.f. Françoise Hampson, ‘Mercenaries: Diagnosis Before Prescription.’ *Netherlands Yearbook of International Law*, Vol. 3 (1991), pp. 14-16.

⁴⁰ Henckaerts, J.-M and Doswald-Beck, L. *Customary International Humanitarian Law*, Vol. I, Rules, ICRC and Cambridge University Press, Cambridge, 2005, Rule 108; Matheson, M.J. ‘Remarks’ in ‘Session One: The United States position on the relation of customary international law to the 1977

to contemporary circumstances that the main international legal instruments devised to deal with mercenaries do not apply to today's private military industry.⁴¹ Even if they did, because of the confusion and dissent surrounding the mercenary protocols, they would serve no benefit to citizens in controlling individual private contractors or the companies that employ them.

The anti-mercenary convention created in 1977 by the Organisation of African Unity (OAU; now the African Union) came into effect in 1985 and defines mercenaries as 'anyone who, not a national of the State against which his actions are directed, is employed, enrolls, or links himself willingly to a person, group, or organisation which seeks political destabilisation'.⁴² This convention only considers mercenaries in the context of overthrowing governments or subverting national organisations and is binding only on African states. Applying it to international private military and security firms, which operate across far broader roles and are ubiquitous, is difficult.⁴³

Mercenary conventions are not subscribed to by many states (only 28 have ratified them to date) and those that have do not necessarily have enabling legislation in place or are the states usually associated with private military employment.⁴⁴ If states do possess the legislation, persons may be prosecuted for the distinct crime of being a mercenary. This would require an individual determination and would need to be implemented on a case-by-case basis. Under international humanitarian law, conversely, it is not a violation of the Geneva Conventions or Protocols to be a mercenary and mercenarism does not attract criminal liability. UN Additional Protocol I allows for an individual prosecution to be pressed for having directly participated in hostilities by the

Protocols Additional to the 1949 Geneva Convention.' *American University Journal of International Law and Policy*, Vol. 2 (1987), p. 426

⁴¹ Percy (2006), p. 41

⁴² OAU, 'Convention for the Elimination of Mercenarism in Africa.' At: http://www.africa-union.org/Official_documents/Treaties_Conventions_Protocols/Convention_on_Mercenaries.pdf. Accessed: 15/09/10

⁴³ Percy(2006), p. 42

⁴⁴ The UK and the US, for example.

internal laws of the detaining state only if that state has anti-mercenary laws operative. An extra distinction between the mercenary conventions and IHL is the former may apply in non-international armed conflict. The latter sees mercenary status only relevant in international armed conflicts, since combatant status is only relevant in those circumstances.⁴⁵ The departure by the new globally active corporatised warriors, from traditional mercenarism as envisaged when the current laws and conventions were formulated in 1985, has seen them not be satisfactorily constrained by any universally effective legal corpus. Subsequently, universal legal identification of that which is a mercenary or a modern private military and security actor in an international conflict, continues to be confused and unresolved.⁴⁶ This would see citizens excluded from their state's normative military-control procedures.

Adding to the confusion, further discussion has evolved about the role and legal status of private military and security companies (and their constituent individuals) in international armed belligerence and their relationship to 'unlawful combatants'. This term has enjoyed renewed popularity since the events of September 11, 2001. Its origination can be traced back to the Second World War, at least, though the multiple concepts it denotes were controversial well before this period.⁴⁷ The American legal case of 1942 concerned a group of German agents who, dressed as civilians, entered US territory in a submarine with the purpose of committing acts of espionage and sabotage. Arrested prior to any acts being committed, they were taken before a specifically constituted military commission and a majority were sentenced to death.⁴⁸ The US Supreme Court in an appeal decision, covered various jurisdictional points and stated that 'by universal agreement and practice, the law of war draws a distinction between

⁴⁵ Cameron, pp. 577-578.

⁴⁶ Percy, Sarah. 'Regulating the Private Security Industry.' Adelphi Paper 384, The International Institute for Strategic Studies, London. Routledge, 2006. pp.7-8.

⁴⁷ Bíliková, Veronika. 'Members of Private Military and Security Companies and/as Unlawful Combatants.' EUI Working Paper AEL 2009/15, European University Institute, Florence Academy of European Law, Italy, 2009, p. 1

⁴⁸ US Supreme Court, *Ex Parte Quirin*, 317 US 1 (1942).

the armed forces and the peaceful populations of belligerent nations and also between those who are lawful and unlawful combatants.⁴⁹ While the former are subject to capture and detention as prisoners of war by opposing military forces, the latter, including spies and saboteurs, are likewise subject to capture and detention and are subject to trial and punishment by military tribunals for acts which render their belligerency unlawful.⁵⁰ Examples given by the Court of persons covered by the term included the spy who secretly and without uniform passes through the military lines of a belligerent in time of war, or an enemy combatant who without uniform comes for the purposes of waging war by destruction of life or property.⁵¹ Thus, the original use of the term ‘unlawful combatant’ was meant to describe regular combatants who, by disguise and stealth, intentionally fail to distinguish themselves from the civilian population. This violates a fundamental principle of IHL, the distinction between combatant and civilian.⁵² This being of particular relevance to a state’s duty and citizens’ rights to control their military actors, public and private.

Subsequent use, modification, non-use, application with, and companionship with other novel invocations saw a broadening of the original term’s scope. This occurred through the Nuremburg Trials, the Cold War, the African decolonisation period of the 1960s and 1970s, and the recent War on Terror. The unlawful combatant now was joined by unprivileged belligerent and irregular combatant. The term ‘enemy combatant’ now stood in for the original and served as a generic for all enemies in the War on Terror, whatever their conduct or status. For a period, this seemed to mark a re-conceptualisation of the distinction between the legality of combatants and civilians (and therefore private military contractors), and the legitimacy of the conflict itself. In

⁴⁹ *Ibid*, para. 30-31.

⁵⁰ US Supreme Court, *Ex Parte Quirin*, 317 US 1 (1942), para 30-31.

⁵¹ *Ibid*.

⁵² Bříliková, p. 3

more recent time, this term has met considerable opposition and has currently fallen out of favour.⁵³

The importance of clarifying these distinctions is necessary to discern the status of private military firms and contractors who are civilians nominally, and as such are not legally entitled to participate in hostilities, if IHL is to be respected. Civilians have immunity from attack but this is revoked if they become ‘armed civilians’ who take part directly in hostilities. As such, members of private military and security companies who are armed and take direct part in hostilities could be rendered unlawful combatants.⁵⁴ This would jeopardise their legitimate use. Debates continue over these taxonomic issues and are thus far, unresolved.⁵⁵

Finally, interventions in modern conflicts are predominantly undertaken by regular armed forces that originate from a selection of countries and their control is aligned with various national rules.⁵⁶ Given that a substantial shift toward the privatisation of key states’ armed forces has occurred, the deployment of private military companies to international conflict arenas has implications for how a state’s violence monopoly is exercised and controlled. While democratic government is held accountable by an informed and public electorate forum, private companies have responsibility only to their shareholders and clients; giving political cover to unpopular military actions. Consequently, some governments have chosen this as a preferred option.⁵⁷

Control over public forces such as police and military relies on de-facto oversight by the state. The state ensures that the groups are clearly identifiable,

⁵³ Bíliková, p. 12

⁵⁴ *Ibid*, p. 4

⁵⁵ *Ibid*, p. 15. Also, Chapter 6 presents some examples of the difficulties that the irresolution of other legalities has generated.

⁵⁶ Wulf, Herbert. ‘Privatization of Security, International Interventions And The Democratic Control Of Armed Forces.’ In Alexandra, Andrew., Baker, Deane-Peter., and Caparini, Marina. *Private Military and Security Companies*. Cass Military Studies, Routledge, Ney York, 2008, p. 191

⁵⁷ Wulf, p. 195. The US and the UK being contemporary representatives.

accountable, and trained to specific standards. Additionally, care is given to the selection, training and discipline of the personnel and weapons use is regulated and controlled. Regulated limits are placed upon the restricted areas where personnel may amass, train, operate and discharge weapons.⁵⁸ The ability of private military force to potentially contravene these long held and publicly overseen control mechanisms is pervasive. The removal from direct domestic political and military regulatory authority makes it unclear how the private military actor in international conflicts would competently carry out an otherwise state controlled monopoly of legitimate violence.⁵⁹

It has been shown that modern Western democracies have developed normative expectations and standards that control the use of legitimated monopoly violence. The legal parameters constraining and directing this force are exposed and publically audited by citizens who have in contemporary times been the main constituents of such force. The introduction of these privatised elements into states' civil/military relationship has threatened to disrupt the norms governing legitimate political violence, and the regulatory mechanisms that animate the rights and duties of internationally deployed regular armed forces. Private military and security agents are currently operating on state authority, with public money, without the full measure of control that modern society has formulated over long experience, to protect itself from abuse by their authorised defence and security providers. The following case studies show how citizens who become disengaged from participation in, and control of, their state's defence and security functions can become the victims not the beneficiaries of private military agency. Moreover, it appears to have been mistakenly assumed by a largely uninformed and therefore unengaged contemporary citizenry (and their elected representatives) that the norms, regulations and laws that apply to a modern state's public military force similarly constrain private military forces currently operating

⁵⁸ Sheehy, p. 69

⁵⁹ Wulf, p. 195

internationally. This misplaced confidence would see some historical lessons about the control of private military force ignored, to the peril of civil society.

Chapter 2

Case study 1: **The Ancient Greeks, ca 700-400 BCE**

'We ourselves, being in early manhood, betook ourselves to soldiering, and went abroad with Iphicrates to Thrace, and after showing our worth there and making some money, we returned home again.'

Isaeus 11.40.¹

The Ancient Greek world witnessed the gradual supplanting of citizen soldiers with an increasingly prolific employment of private and increasingly professional fighters serving political masters or states in whom they had little investment. This proved to be problematic for, and inconsistent with, the long-term even distribution of civil and city-state security goods. Given that there appears to be some alignment with the direction contemporary civil/military affairs are taking, careful examination of the Ancient Greek world's security disintegration might prove informative to current trends. The published historical record on Greek mercenaries is sporadic and fragmented resulting in a case study of similar presentation. The observations recorded and forwarded here are at best a shadow of the real state of affairs but of interest as control of private actors working to replace state security and defence apparatus, is again a controversial issue.

This case study briefly maps the replacement of representative oligarchs with tyrants in the seventh century BCE heralding the proliferation of private military, then a return to the citizen-soldier ideal of a Classical fifth century democratic city-state, and finishes with a Spartan vignette from the opening of the fourth century. Mercenary use can be seen as a conspicuous attendant of the political renovations and machinations that characterised and transformed the Greek world. Increasing military professionalism unrestrained by culture or custom and combined with a lack of local economic

¹ Ca. 385 BCE. The quotation concerns two brothers who, when orphaned, sold most of their property to provide marriage portions for each of their two sisters, then... "We ourselves..." In Parke, H.W. *Greek Mercenary Soldiers*. Oxford University Press, London, 1933, p. 232

opportunity led to the indiscriminate export of those skills, eventually weakening Greek-state security.

This chapter does not seek to attach blame for the vagaries of change solely to private military actors and wherever possible it avoids the many unresolved issues in ancient Greek economics and politics. It is understood that circumstances are often quite incomparable across two-and-a-half-thousand years. It serves as an example of what occurred in the absence of rigorous normative controls governing private military use in an unregulated market paradigm. It emphasizes the notion that the soldier who has an interest in and the interest of a state, can play a stabilising security role in that state. Further, the exploitation of the itinerant Greek mercenary evolved to be a destabilising instrument used in the coercion of public affairs by self interested private and state actors. Uncontrolled mercenary use in the ancient Greek paradigm can possibly be seen as analogous to the largely uncontrolled and under-regulated international market that characterises the contemporary private military operating environment. This being the case, it would be prudent to heed Western antecedents' lessons.

The origination of what now is known as a mercenary, in the ancient Greek world, is unknown and the term 'mercenary' did not appear in the Classical Greek lexicon.² Outside of the Greek peoples it is recorded in the Old Testament that David the Israelite served as a military hireling of the Philistines in the early Iron Age.³ It may also have been the case that David hired Greek-speaking mercenaries from Crete in the tenth century BCE, though sources are unclear as to why.⁴ Seemingly though, it was a commonplace occurrence and an accepted part of military practice of those early Archaic times. Evidence shows the Ionian Greek cities were exporting soldiers to Egypt as early as the mid-seventh century.⁵ It has been noted that the history of Greek

² Parke, p. 4

³ Bk. I Samuel, 27.1-29.11; Parke, p.1

⁴ Bk. II Samuel, 20.23; Bk. I Kings, 1.38

⁵ Murray, Oswyn. *Early Greece*. Harvard University Press, Cambridge, 1993, p. 131.

mercenaries shows an evolution in Hellenistic warfare from primitive and relatively unskilled beginnings to a developed and highly organised zenith. An archetypal Greek soldier of the fifth century BCE and earlier was an amateur and the mercenary, a professional. In the important matter of warring it was the professional that eventually supplanted the amateur.⁶ This could be attributed to the former's ability to modernise their weapons and skills as money became more freely available, increased competition between employers/authorities, and citizens disengagement from personal involvement in the security matters of their city-state.

The ancient Greek world was governed by elite aristocrat oligarchs who eventually succumbed to a new political phenomenon the Greeks called tyranny (*tyrannis*). The 'age of tyrants' spanned the years 670-500 and affected a majority of the Greek states.⁷ A tyrant approximated what in modern parlance might be called a dictator: a man who took sole power in the state and retained it in defiance of previous constitutional norms. The transition could be executed by force in the case of personal power but also a common justification for dictatorship was a proven ability to supply a more sympathetic government for a particular demographic.⁸ Some distinction is made between seventh and sixth century tyrannies and those appearing during the fourth century. The former were generally created because of prevailing economic straits and the latter were generally militaristic demagogues.⁹ Another distinction is important: the tyrants of the earlier period were by and large content to utilise mercenaries, if at all, as a personal bodyguard whereas the fourth century tyrants employed these professional soldiers for territorial expansion as well as personal security.¹⁰ A traditionally favoured picture of the rise to power of the Greek tyrants in the seventh century is painted by

⁶ Parke, p. 1

⁷ Pomeroy, Sarah B., et al. *A Brief History of Ancient Greece*. Oxford University Press, New York, 2004, p. 75

⁸ Andrewes, A. *The Greek Tyrants*. Hutchinson & Co. Ltd, London, 1956, p. 7

⁹ Parke, p.7

¹⁰ *Ibid*, p.7

Aristotle: ‘when aristocrats became over bearing and abrasive, the demos and the masses set up a tyrant to champion their own interests.’¹¹ This is controversial as at least one later source contends that the ascension of the tyrants has had a more sophisticated treatment in the twentieth century and claims there is no contemporary evidence that the nobility became more arrogant mid century.¹²

Attention has been drawn to the impact the introduction of ‘hoplite’ warfare made on political consciousness by the middle classes.¹³ Briefly (a fuller treatment of the hoplite is given further in), the hoplite was a Greek citizen and semi-professional fighter who developed the ability to militarily equip and maintain himself during wartime according to his social standing. The equipment was usually a spear, shield, armour, and short sword. Traditionally, inter-community Greek war was a reflection of the societies that comprised those communities. Citizen assemblies were constituted of Greek-city citizens and their armed formations exemplified this. Citizens were expected to fight and hiring proxy fighters went against this expectation.¹⁴ The contemporary expectation of a state’s citizenry comprising their military forces, mirrors this ancient Greek norm.

Before 700 BCE, the aristocratic class had fought as individual knights and spear throwers, and the commoners involvement was limited to cheering and throwing stones from the sidelines. Towards 650 the commoners had become vital to community defence. The spear, armour, and heavy shield combination were deployed in close formation and the larger the formation the more effective it became. The nobles then arranged the commoners into a new configuration called a phalanx (this was a closely

¹¹ Aristotle. *Politics*, 1310 B.

¹² Drews, Robert. ‘The First Tyrants of Greece’, *Historia: Zeitschrift für Alte Geschichte*, Vol. 21, No. 2 (2nd. Qtr., 1972), Franz Steiner Verlag, p. 129

¹³ Nilsson, M. ‘Dei Hoplitentaktik und das Staatswesen’, *Klio*, XXII (1929), pp. 240-249. In Drews, p.130.

¹⁴ Trundle, p.1, C.f. Aymard, A. (1967) ‘Mercenariat et l’histoire grecque’, *Etudes d’histoire ancienne*, Presses universitaires de France, Paris. p. 498; Mossé, C. (1968) ‘Le rôle politique des armées dans le monde grecque à l’époque classique’, in J.-P Vernant (ed.) *Problèmes de la guerre en Grèce*, Mouton, Paris. pp. 221-229; Vernant, J.-P. (1974) *Myth and Society in Ancient Greece*, (trans.) A. Szegedy-Maszak, Baltimore, MD: Johns Hopkins University Press. p. 28

organised hoplite formation presenting closed ranks of overlapping shields and protruding spears). In the early seventh century the masses were content to let the nobles rule as they were fighting on behalf of the community. By 650 the *demos* (village or city ward constituting part of a larger territory), which was now supplying community defence in the form of the hoplite phalanx, demanded a greater voice in the governing of their community.¹⁵

This would appear to indicate that the idea of citizen involvement in community security could herald or accompany inclusiveness in communal governance. As the *demos* was not yet politically mature enough to take power for itself, it presented an aspiring tyrant as their champion.¹⁶ The tyrant would require armed forces and mercenaries could be engaged as and when they were required. This might also avoid factionalism developing among citizen-soldiers with divided loyalties. In the case of modern states, nationalism is vigorously promoted to counter such divisions.

Many hoplites were ‘professional’ adventurers who as *epikouroi* (‘fighters-alongside’ i.e., mercenaries), fought wherever their valuable services were requested. The ruler Gyges (*ca.* 685), assembled a phalanx of hoplites and overthrew Candaules, the King of Lydia. As he did not adopt the royal symbols or titles he was called *tyrannos* by his subjects and their Greek neighbours. About twenty years later (for reasons unknown but possibly because political support had rallied), he recruited a force of Ionians and Carians with which the tyrant Psammetichus made himself master of Egypt.¹⁷ Inspired by these precedents, various ambitious Greeks engaged hoplite forces and attempted similar masteries of other Greek communities.¹⁸ Unconstrained individual, and therefore private, ambition supported by mercenary force can be seen as one path to tyranny here. Additionally, there is an element of the precedent becoming

¹⁵ Murray, p.130

¹⁶ White, M. ‘Greek Tyranny’, *Phoenix* IX (1955), pp. 5-6; Andrewes, p. 36

¹⁷ Millender, Ellen. ‘The Politics of Spartan Mercenary Service.’ *Sparta & War*. Hodkinson, Stephen., and Powell, Anton., (eds). Classical Press of Wales, Swansea, 2006. p. 235; Murray, p.131

¹⁸ Drews, p. 143.

normative. This would be of concern if the present unrestrained use of private military by an executive authority followed a similar path.

Little real detail of the dozens of tyrants and their mercenaries who came and went is known but a general pattern can be discerned. Most leaders emerged from the elite aristocratic group though not always from the uppermost tier.¹⁹ One, Cypselus of Corinth (*ca.* 657-627), became marginalised within the historically prominent clan of the Bacchiads because his mother, a Bacchiad, had married outside her clan.²⁰ In addition to noble birth, aspiring tyrants were distinguished in their city-states for their personal achievements. Cypselus, prior to seizing control, had held the post of polemarch (military commander) in Corinth. Cylon of Athens, whose attempted coup in 632 failed, had won fame in the Olympic games. A final characteristic is, despite a desire to forge dynasties by passing rule to their sons, few tyrannies lasted more than three generations and most collapsed after two.²¹ The method of enforcement was usually carried out by armed followers who could be found among disaffected aristocrats from within the *poleis* (plural of *polis*, or city-state), a sympathetic tyrant from without, or mercenaries. Mercenaries, for example, performed a key function in the first ascension of the Peisistratid tyranny (546-510).²² It is unlikely that the oligarchs could have been overthrown without the tacit support of the citizens who comprised the heavily armed farmer-hoplite formations.²³ It is significant that the citizens generally chose not to force an armed remedy by themselves but preferred to have mercenaries, aristocrats, and tyrants accomplish it for them. These mechanisms reappeared later

¹⁹ Pomeroy, et al, p. 75

²⁰ Bacchiad was an old and venerated Greek family with royal and noble (even God related) antecedents.

²¹ Good evidence is not available to indicate why this would be. Speculation might suggest that failing support from the citizenry as one contributing factor.

²² Lytton, Edward Bulwer. *Athens: Its Rise and Fall*. 1837. Bicentenary Edition, (ed.) Oswyn Murray Routledge, New York, 2004. p. 203. Lytton describes the subterfuge of armed young men disguised as women achieving a victory at Colias., And, Martin, Thomas R. 'Why Did the Greek "Polis" Originally Need Coins?' *Historia: Zeitschrift für Alte Geschichte*, Vol. 45, No. 3 (3rd. Qtr., 1996), p. 273; Parke, pp. 8-9. Peisistratid was another noble family seeking political ascendancy.

²³ Pomeroy, et al, p. 75

when internal city factionalism transferred to external competition amongst city-states and mercenaries again played a coercion role.

The support and assistance provided by mercenary soldiers to the various actors throughout the age of tyrants should not be necessarily viewed as consistently iniquitous as private military actors assisted the transition from oligarchic rule to ‘democratic tyranny’ rule within the Greek city-states. This period of ‘tyrannical democracy’ saw a continuation and stimulation of Greek cultural progress and must also have figured in the genesis of classical Athenian democracy.²⁴ Political participation involving the *demos*, occurring as early as the seventh century at Athens, persisted through the age of tyranny, as elections to public offices (‘influenced’ as they may have been), continued without apparent fundamental change.²⁵ The noted Classical historians Herodotus and Thucydides concur that the Athenian laws and political processes that existed before the tyranny of the Peisistratids were followed during its time.²⁶ This is contrasted by the case of the Deinomenid tyrant Thrasybulus who, after coming to power in Syracuse (*ca.* 466-465), murdered and exiled many Syracusans while importing numerous mercenaries to exert his control.²⁷ The citizens soon joined together and the entire Greek city-state was united in his ouster. The response of Thrasybulus was to gather an army of allies and mercenaries but he was eventually defeated. The city then enjoyed prosperity and peace and ‘guarded its democracy for almost sixty years.’²⁸ The citizen-hoplite strength, and therefore city-state strength, can be idealised in its unity of public purpose and provides an example of civil/military objective-alignment. Mercenaries

²⁴ Lavelle, B.M. *Fame, Money, Power*. University of Michigan Press, Ann Arbor, 2005. p. 2

²⁵ Lavelle, p. 2. *C.f.*, Raaflaub, K. ‘The Transformation of Athens in the Fifth Century.’ In *Democracy, Empire and the Arts in Fifth Century Athens*. (eds.) D. Boedeker and K. Raaflaub. Cambridge, Massachusetts, 1998. pp. 15-22.

²⁶ 546-510 BCE. Thucydides, 6.54.6. [Peisistratids] ‘observed the laws that had been established before the tyranny’. And Herodotus, 1.59.6. [Peisistratos ruled] ‘having upset none of the existing offices or changed any of the laws’. In Lavelle, p. 2

²⁷ Diodorus 11.38.7, and Aristotle, *Politics*, 1315b34-38. *C.f.*, Robison, Eric. ‘Democracy in Syracuse, 466-412 B.C.’ *Harvard Studies in Classical Philology*, Vol. 100 (2000), p. 191

²⁸ Diodorus 11.68.6. In Robison, p. 191

challenged that societal ideal.²⁹ This issue reappears in later centuries and concerns about competing motives and objectives persist into the current era.

Warfare in Classical Greece was not a private but a public feature of a citizen's life. It was an integral part of the Greek citizens' participatory and social obligation to their community. A regular Greek soldier was identified as *stratiôtês*, which bore no pejorative association.³⁰ Types of soldiers were further identified by the particular specialty they exercised: the *hoplitai*; a heavily armed infantryman also commonly known as the hoplite, and *psiloi*; lightly armed men who were usually designated by arms used. These included: *akonstitai*; javelin-men, *petroboloi*; stone-throwers, *toxotai*; archers, *peltastai*; peltasts who carried crescent-shaped wicker shields (*peltai*), and *gymnêtês*; literally naked-ones or unarmed men.³¹ These distinctions possibly enabled later specialisations in the mercenary formations. This would make them appear more professional than their contemporaries and an attractive export commodity. Clearly, they represented an early example of developing professional military standards.

Despite the rudimentary character of Greek warfare, their soldiers were often superior to those they encountered elsewhere and this superiority led to a growing demand for their professional services from abroad.³² The citizen fought carrying a large round concave shield that protected him and the right side of the man to his left. This generated a good degree of trust and they stood close together for mutual protection. Hoplite armies therefore relied as much on morale and esprit-de-corps as on skill. Communalism and civic duty were key components of hoplite warfare. Greek citizens were land-holding soldiers who provided their own equipment and defended their state and their land from attack. Their warfare was characterised by mainly border feuds of varying scale. In any battle, citizens might be called on to fight according to

²⁹ Trundle, Mathew. *Greek Mercenaries*. Routledge, New York, 2004. p. 1

³⁰ *Ibid*, p. 10

³¹ Parke, p. 1; Trundle, p.10;

³² Murray, pp. 231-233; Parke, p. 1. In particular 30,000 Carian and Ionian Greek mercenary soldiers were to play a major role in securing the new Egyptian dynasty of Psammetichus I. In Trundle, p. 44

their standing in their city as cavalry, heavy infantry, or skirmishers. Whilst all would have had some familiarity with warfare, a few proved efficient but none were devoted entirely to the study and practice of it.³³

This would appear to be the standard prior to the fifth century and reinforces a view that the Greek citizen-soldier was an elemental key that helped secure their communities. This contributed to the demise, for the time being, of both tyrants and mercenaries.³⁴ Because the citizen-soldier had an interest in maintaining a stable and prosperous civil environment, as their principal economic activity was not warring, they were the primary beneficiaries of the security goods this created. The increasing stability of the city-state also made citizens more capable of controlling government apparatus, a primary norm of the modern state/citizen relationship.

This does not mean that the Greek citizen-soldier was overly concerned with the whole of their community, just their particular interest in it. The seventh century until the Roman conquest saw Greek history as a succession of political plottings and counter plottings, banishments, or massacres. Due to large economic changes that occurred during the eighth, seventh, and sixth centuries, the commoners in the cities had eventually come to realise the significance of political power. They, by various means, demanded political recognition and social reforms, and there is no particular evidence that this excluded the citizen-soldier.³⁵ The old order of oligarch aristocrats was challenged by the new order of democrats. In some Greek cities the aristocrats took a vow of animosity toward the new ‘popular movement’ and strongly resisted this rise of the common people.³⁶ Without detailing the entire basis and extent of Greek social and political partisanship, these animosities were not confined to the aristocracy but permeated all levels of Greek life and frequently manifested in the pursuance of

³³ Parke, p.1

³⁴ *Ibid*, p. 10

³⁵ Chroust, Anton-Herman. ‘Treason and Patriotism in Ancient Greece.’ *Journal of the History of Ideas*, Vol. 15 (April, 1954), p. 280

³⁶ Aristotle, *Politics* 1310 a 9., 1302 b 25, 1305 a 37; Plato, *Republic* 566C. *C.f.*, Chroust, p. 280

vendettas, revolutions, counter-revolutions, and civil wars, often aggravated by foreign meddling and agendas.³⁷ The most impermeable bond the ancient Greek man knew was to these partisan ‘brotherhood’ loyalties, over and above loyalty to their community or city.³⁸ It can be imagined that the soldier might have had a certain level of attachment to his *polis* but ultimate allegiance would have been to his brotherhood. This is the Homeric notion of *hetairoi* (a club or fraternity), whereby illustrious warriors’ special bond required of them a duty to share friends and enemies.³⁹ That duty, at times, exacted a loyalty from club members that was incompatible with their subservient allegiance to their city as a citizen.⁴⁰ This illustrates a potential weakness in ancient Greek state or city security-cohesiveness: a public citizen-soldier could be obliged to serve some other private, and possibly treasonous, agenda as a mercenary. This last concern presents again in Chapter 3, where mercenaries predated on their own city-states but the motive was primarily fiscal.

Mercenary use was markedly diminished in fifth century city-state democracies when compared to the frequency with which they appeared in the previous age of tyranny and their great proliferation in the following century. This coincided with the general prosperity and satisfaction the democratic city-state engendered. Lack of demand is reiterated in the pre-eminence of Arcadia, the most backward Greek district in *polis* development, as the chief supplier of mercenaries, many of whom were primarily employed by the Persians.⁴¹ The stability and dominance of Athenian democracy in the wake of its establishment by Cleisthenes around 508, enabled a strong military capability and proved politically attractive so it became unnecessary for

³⁷ Chroust, p. 280

³⁸ *Ibid*, p. 281

³⁹ Aristotle, *Constitution of Athens* 20.1

⁴⁰ Chroust p. 282. The case of Athens during 411-410 and 404-403 BCE.

⁴¹ Parke, p. 14. *C.f.*, Thucydides VII. 1 vii; Roy, J. ‘The Mercenaries of Cyrus.’ *Historia: Zeitschrift für Alte Geschichte*, Vol. 16, No. 3 (July 1967), p. 321.

second-tier Greek city-states to choose between tyranny or oligarchy.⁴² This move may have contributed to a general mercenary reduction. The redistribution, by Cleisthenes, of the civic functions once performed by the four ancient Ionian tribes (the Bacchiads, for example) to ten newly based tribes also included a restructuring of the military along the same lines. Each tribe now elected its officers and *stratēgos*, or chief general.⁴³

This will have, nominally, placed the citizen-soldier under rudimentary democratic control (forming an antecedent for current civil/military control structuring). As the prosperity and satisfaction that Cleisthenic reforms brought to the commons involved a redistribution of wealthy aristocrat family's power this, quite unsurprisingly, was not well received by all.⁴⁴ The situation was further exploited by the Greek western challenger Sparta, and the foreign eastern challenger Persia. In keeping with Greek tradition, disunity and ambition eventually saw the private rivalries overtake mass benefaction of the *demos* and in turn the other *poleis*.⁴⁵ Incidentally, this was also to transpire concurrent with an increase in mercenaries. It would seem prudent here, to mark these transitions and following events as instructive to modern affairs.

Fifth century democracy was a result of the successive reforms of Solon, Peisistratus, and Cleisthenes steadily overhauling the traditional ruling aristocrats' and tyrants' premiership by an increasingly powerful middle class. The citizen-soldier was the monopoly armed representative of this emerging group.⁴⁶ Following the success of the new democracy and Athenian navy over the Spartans, the citizen-soldier became an instrument for spreading then policing the new political paradigm. With success came growing ambitions and opportunities, with democracy eventually becoming imperialism

⁴² Boardman, J., Griffin, J., and Murray, O. (eds). *Greece and the Hellenistic World*. Oxford University Press, Oxford, 1988. p. 124.

⁴³ Pomeroy, et al, p. 122.

⁴⁴ Sacks, David. *Ancient Greek World*. (ed. cons.), Oswyn Murray. Facts on File Inc., New York, 1995. p. 60; Pomeroy, et al, p.138

⁴⁵ Burckhardt, Jacob. *The Greeks and Greek Civilization*. Sheila Stern (trans.), Oswyn Murray (ed.). HarperCollins, London, 1998. p. 274

⁴⁶ Walbank, F.W. 'The Causes of Greek Decline.' *The Journal of Hellenic Studies*, Vol. 64 (1944), p. 12

under the Athenian Pericles' stewardship.⁴⁷ The middle classes had taken up agriculture, usury, and paid civil-service posts with enthusiasm and citizenship itself became an exclusive club denied to the foreigner or stranger whose membership was paid for, in part, by subject allies. The cultural elitism would lead to political disaffection and eventually social and economic decline.⁴⁸ It was in this milieu that the seeds of future conflict, and mercenary proliferation, were propagated.⁴⁹

By the late fifth and early fourth centuries, prolific mercenary use began to once more feature prominently in Greek warfare.⁵⁰ In the wake of an Athenian defeat to Sparta and her allies in the Peloponnesian War (431-404), the previously employed mercenaries were now without a paymaster in a destabilised and devastated Greek mainland.⁵¹ As most of the Athenian citizens actually lived in the countryside, there was a pressing need to reassess fiscal practicalities. The small holder who mortgage defaulted on their hereditary land became dispossessed, resulting in unemployed wanderers seeking work.⁵² This situation became increasingly widespread and it was even observed that the free wanderers were so prolific and numerous that fear of a social uprising existed: 'They are wandering for lack of even their daily bread, and destroying those with whom they come in contact... they have become an equal danger to barbarian and Greek'.⁵³ The Greek historian Diodorus Siculus writes that dispossessed men enlisting as mercenaries expected to gain many advantages, though this was not necessarily cash up front.⁵⁴ A modern equivalent might be recognised in

⁴⁷ Sacks, pp. 173-175.

⁴⁸ Walbank, p. 12

⁴⁹ Burckhardt, p. 281

⁵⁰ Holladay, A.J. 'Hoplites and Heresies.' *Journal of Hellenic Studies*, Vol. 102, (1982), p. 101

⁵¹ Millender, p. 235

⁵² Pomeroy, et al, p.111., Demosthenes 20.32; 56.7 In, Miller, p.154., and Xenophon *Oec.* 3.6; 2.1., Isocrates 5.121; 8.24., and Demosthenes 14.31.,

⁵³ Isocrates 5.121, In Miller, p. 154

⁵⁴ From the earliest times the acquisition of booty had been the perquisite of the warrior: 'when a city is taken in war, the persons and the property of the inhabitants belong to the captors.' Xenophon, *Cyr.* 7.5.73. In Miller, p. 155. And Diodorus, 20.40.6-7

the 2003 Iraq War, where foreign nationals were recruited into American private military companies with the additional lure of US citizenship.

The outright pay for such services was not much more than a subsistence allowance. Thracian light-armed mercenary troops (a new tactical development called peltasts) heading for Syracuse from Athens in 413 received one *drachma* per day compared to a probable one-and-a-half for a citizen-soldier. Such was the increasing supply of men in the fourth century it prevented wages keeping pace with inflation and by the year 350 the rate was down to four *obols* per day (6 *obols* = 1 *drachma*). Around this time, the hiring rate for unskilled slave labour was three *obols*.⁵⁵ Clearly, there must have been a relationship between lack of economic opportunity in the city-states and mercenary proliferation. What is also apparent from these accounts is the rise and importance of cash money to individuals in the record: a motivation for extra-state mercenary movement that possibly degraded the traditional intra-*polis* loyalty and identity that appeared to originally cement Greek security.

There was also a growing disinclination in the fourth century by the citizen armies of the anti-Spartan alliance to actively make war – as is the case with modern democracies. This was resolved in Athens' case by the hiring of mercenary peltasts, even in the wake of losing her empire and tributes. The citizens' reticence was due largely to the prolonged nature and obscurity of objectives that now characterised their conflicts, though Athens still fielded hoplites in the face of a serious threat such as the battle at Leuctra where Sparta was defeated by Thebes in 371.⁵⁶ The fourth century's degraded political, economic, and social climes saw attempts at supremacy by Sparta, Athens and Thebes, with Persia holding the balance of power and has been called 'The age of mercenary soldiers.'⁵⁷

⁵⁵ Miller, p. 155

⁵⁶ Holladay, p. 102

⁵⁷ Boardman, et al. p. 136

The fourth century's chronology of Greek political events saw a continual series of conflicts, alliances, liberations, defeats, and attacks culminating with the later accession of Alexander and another term of Greek expansion aided by mercenaries. A limited portrait of mercenary use to influence partisan politics during this time is to be gained by brief examination of Sparta. It traditionally did not share the Athenian vision of democracy and sought to subvert it. She was also, wisely as it transpired, more considered in her control of military force, private or otherwise.

The abundance of Greek mercenary soldiers in the fourth century Mediterranean was: 'at once a symptom and a secondary cause of the downfall of the city-state'.⁵⁸ By the close of the Peloponnesian War it had become understood by the tyrants and oligarchs what an advantageous weapon a mercenary army could be.⁵⁹ The length, extent, and complexity of the War had shown that the city-dwelling citizen was ill prepared and disinclined to meet the challenge. The heavily armed soldier of 400 BCE could be termed an entrenched warfare technology that was best suited to the defence of fortified cities. The new technology of choice, a lightly armed mercenary skirmisher (peltast) carrying a small wicker shield, spear and perhaps a small dagger or sword, was a highly manoeuvrable and adaptable weapon which not all commanders were capable of exploiting fully.⁶⁰ Upon the Athenian defeat in the War, thirty tyrants were imposed and both their imposition by Sparta in 404 and their removal by Athenian democrats in 403, were assisted by mercenaries.⁶¹

These events appear to mark the recognition of the role mercenaries could play in Sparta's future imperialist ambitions.⁶² Under their leader Lysander, who was an established *xenos* of the Persian Cyrus the Younger, the Spartans exported their military expertise and employed Peloponnesian mercenaries in support of the Persian prince's

⁵⁸ Parke, p. 20

⁵⁹ Thucydides, II xxxiii, and III. lxxiii seq. lxxv, iv. lxvi, and IV lii. In Parke, p. 18

⁶⁰ Parke, pp. 20-21 + p. 84 + p. 236

⁶¹ Xenophon, *Hellenica*, II. iv. 43. In Parke, p.19

⁶² Millender, p. 239

attempted coup against his brother Artaxerxes II in 401.⁶³ According to Xenophon, Cyrus invoked *xenoi* obligations (an exemplar of the previously mentioned ‘brotherhood’ responsibilities) of various Greeks to assist in his war, sent money to several friends to raise troops, and succeeded in persuading the Spartans to ‘show themselves as good friends to him as he had been to them in their war against the Athenians’.⁶⁴ Spartan authorities also sent a force of 700 Peloponnesian mercenaries under the command of the Spartan Cheirisophus.⁶⁵ While apparently numerically insignificant, the move was to prove astute for the Spartans as political and military control of this group would prove to be influential.

As indicated at this case study’s outset, a general avoidance of the intricacies of Greek politics was to be observed. However, it seems prudent to introduce a small measure of it at this point to indicate an implication of mercenary employment. The Spartan response to Cyrus’s invocation of ‘guest-friend’ responsibilities allowed them to simultaneously balance those obligations while furthering their hegemonic aspirations:

‘Sparta was eating her cake and having it. While posing as the liberator of the Greeks from Athenian tyranny she had been constrained to take much money from Persia, herself no stranger to despotism over the Greeks, and now she was repaying a debt to the man most responsible for channelling that decisive Persian money, at minimum cost in terms of cash and citizen manpower, and at the same time notionally pursuing a consistent policy of liberating the Greeks. Besides, by conducting a war against Artaxerxes in effect by proxy, Sparta was obviating the danger of the mercenaries being turned against Spartan power in the Aegean by their immediate commanders.’⁶⁶

This small extract gives a representative indication of the intricacies, difficulties, and subtleties attendant with the employment of mercenaries in the turbulent world of fourth century Greek politics and the utility that they could fulfil, or betray, for their respective

⁶³ *Xenia* or *Xenoi* (‘Guest-friends’) was a mutual bond of friendship and trust between individuals who belonged to separate *demoi* (plural of *demos*), often far apart. In Pomeroy, et al. p. 49; Trundle, p. 45, *Xenoi* are foreign, ritualised friends.

⁶⁴ Xenophon, *Hellenica*, 3.1.1; cf. Diodorus 14.19.4; Plutarch, *Artaxerxes* 6.3

⁶⁵ Xenophon, *Anabasis* 1.4.3. Note: Cheirisophus was a native of Cyrene, a major Greek city of North Africa. It had submitted to the Persians ca. 525 BCE. In Sacks, pp. 73-74.

⁶⁶ Cartledge, P. *Agasilaos and the Crisis of Sparta*. London and Baltimore, 1987. p. 321. In Millender, pp. 242-243.

masters. This indicates that the state disinterested in the individual elements that comprised the Greek security apparatus – the hoplites – was in danger of having the disenfranchised soldier seek opportunity elsewhere when not constrained from doing so. The unfettered ‘free-market’ approach to state security matters left many Greek city-states dangerously exposed, where more careful management may have proved beneficial.

The point might be further exemplified by the various appointments of expedition leader to the so-called ‘10,000’ as related by Xenophon in the *Anabasis*.⁶⁷ Initially, a cursory pass over the situation would have the Spartans playing no more than a supporting role in the trials and tribulations of Cyrus’s expeditionary forces but a more studied approach reveals additional layers.⁶⁸ As noted above, Cheirisophus commanded a relatively small contingent of 700 Peloponnesian mercenaries. His inclusion in the quest had been at the personal request of Cyrus but as Sparta tightly controlled the direct participation of its soldiers in foreign conflicts (by threat of exile), they will have been given authority by Spartan leader Lysander, who possibly saw an opportunity for furthering his personal influence in Asia Minor.⁶⁹ A compatriot of Cheirisophus, the Lacedaemonian (Laconia was Sparta’s surrounding territory) mercenary commander Clearchus, was not one of Cyrus’s established *xenoi* but the prince’s admiration of his military experience likely established a *xenia*.⁷⁰ His importance to Cyrus is attested by him being eventually appointed chief commander of the 10,000 and Cyrus’s second-in-command. He was a Spartan exile and had been condemned to death in 402 for insubordination.⁷¹ As an exile, Clearchus was an mercenary outsider whom the Spartans

⁶⁷ Where some 11,000 Cyrean Greek mercenaries hired by Cyrus went off to Persia to engage in a coup against his brother Artaxerxes the Great King, were defeated and forced to flee back to Greece, *ca.* 401 BCE. *C.f.*, Xenophon, *Anabasis* 1.2.9

⁶⁸ Millender, p. 239

⁶⁹ Cartledge, p. 191 + p. 352; Isocrates, 11.18; Xenophon. *Anabasis*, 1.4.3. This indicates he was likely another of Cyrus’s *xenos*.

⁷⁰ Xenophon. *Anabasis*, 1.3.2-6

⁷¹ *Ibid.*, 2.6.4-5

could employ discreetly and disavow if necessary, as they hedged their bets regarding Cyrus's attempted coup.⁷² Clearchus's importance to the Spartan authorities is demonstrated by their not interfering in his army recruitment drive and military activity in the Thracian Chersonese, a strategically important area.⁷³ There are also no reported difficulties in the sources regarding his relations with other Spartan commanders who did have official approval to support Cyrus.⁷⁴ When Cyrus and his mercenary army met defeat at Cunaxa, Clearchus retained his position until his death shortly afterwards whereupon the mantle of Cyreian leadership was bestowed upon the Spartan general Cheirisophus; he was later elected sole commander-in-chief of the 10,000.⁷⁵ Again, this command was short-lived and his passing saw his lieutenant Neon, another Lacedaemonian, lead the mercenary army. Ultimately, this fell to Xenophon who led them back to the Greek mainland where their employment and patronage eventually fell to the Spartans.⁷⁶

The convention of having a mercenary commander with Spartan connections leading the expedition is pronounced and seems managed. There is an indication that control of the 10,000 mercenary force through Lacedaemonian generals was conducted with home-state approval and that Sparta contributed to the coup attempt without committing significant amounts of its own soldiers or resources.⁷⁷ In the event that the coup failed, they had a degree of plausible deniability that would not have been possible had state hoplite-soldiers been deployed, thereby not alienating the incumbent Persian King Artaxerxes. If it succeeded, Cyrus would be indebted to them and they would reap the benefits from Cyrus's gratitude, pushing their interests further into the East. When it did fail, having had military commanders that were Lacedaemonian also meant that a

⁷² Millender, p. 241

⁷³ Xenophon. *Anabasis* 1.1.9, 1.2.9

⁷⁴ Millender, p. 241

⁷⁵ Xenophon. *Anabasis*. 6.1.16-32.

⁷⁶ Trundle, p. 76

⁷⁷ Hodkinson, p. 243

very large, well disciplined, and professional mercenary force was not beyond Spartan influence. The Spartans continued to exploit, though not always successfully, the demand for their military leadership of mercenaries as a foreign policy tool.⁷⁸ This indicates that the management and use of private military commanders as force-multipliers was a significant step in the political control of disparate mercenary troops and that a continued state interest in them could be crucial. Certainly, the threat of citizenship withdrawal in modern times might be considered an influential control mechanism, when private military contractors become unemployed.

From earliest times the Greeks were comfortable in the use and supply of mercenaries to accomplish their political ambitions. The progression through the seventh and sixth centuries from aristocratic oligarchies to tyrannical democracies was assisted through the use of the hoplite who was primarily a citizen and secondarily a mercenary adventurer. Communal security fell upon these fighters and their leadership was provided by a ruling elite but eventually the citizen-soldier demanded a greater voice in the manner in which the product of their service was exercised. This democratic environment eschewed both tyrants and mercenaries. Prolonged Greek security would appear to have been based on control of military force and its leadership and therefore the means of making war, which limited private or self-interested use of mercenaries. When economic circumstances became untenable, the citizen-soldier became a mercenary and found employment in the export of his martial skills to paymasters whose interests did not necessarily coincide with their home-state. Unemployed citizen-soldiers without any duty to a home-state thereby became employed professional mercenaries who sought continuous employment.

In a competitive employment environment it became necessary to improve upon skills and equipment, driving demand. Some city-states found benefit in having these

⁷⁸ Parke, p. 85. He contends that their competency was limited to hoplite-soldier leadership, + p. 245

mercenary elements far away from home, rather than dangerously close, others began to utilise them to further foreign policy goals. Outside of the 'age of democratic tyranny' internal state-security still by-and-large depended upon loyalty bought which could be superseded by complex fraternal obligations and private ambitions of individuals or parties. The loosening of effective political control of, and state economic interest in, Greek mercenary forces allowed indiscriminate employment by hostile elements. While it must be remembered that this was within a normal context for the time, there could be no great mercenary proliferation without demand and the demand was for private ends.

The proliferation exacerbated the normative security synergy between the citizenry, ruling nobility, and the city-state. It may be observed from the Greek experience, that when professional private fighters hold the responsibility for state (or in this case city-state) security, careful attention must be given to the controls that govern their use. Cautiously planned economic and political engagement with such force must accompany their employment and crucially, their unemployment. Failure to promote these types of controls likely did nothing to prevent the general decline of security in the Ancient Greek world and suggests a cautionary approach to the unregulated use of private military force, regardless of epoch.

Chapter 3

Case Study 2: *Condottieri* in Italy ca. 1250-1500

'...since the ruin of Italy is now caused by nothing else but her having relied for many years on mercenary arms.'

Niccolò Machiavelli.¹

The Italian peninsula during transition from the Late Medieval to the Early Renaissance was predominately characterised by economic uncertainty, political, social, and military change. The thirteenth century saw a move away from amateur civic armies, toward permanent professional mercenary forces in the fourteenth, as competing ideologies, cities, factions, and individuals contended for primacy. In the fifteenth century, these evolved into mercenary forces leading citizen formations, with key mercenary captains achieving military and political prominence. As military professionalism increased in mercenaries and their leaders, there was an accompanying increase in the lack of control civil authorities could exercise over them and this trend toward tyranny gradually increased as individual military principals emerged politically and began to show an interest in affairs of state. The trend proved to be detrimental to overall Italian territorial integrity. The present proliferation of private military companies has largely occurred through the desire of certain governing authorities to economise, citizen unwillingness to war, and an accompanying belief that the free-market will provide the appropriate controls. Attached to this is the general public's assumption that a private military agent being paid, or not, by the principal constitutes an inviolable control mechanism. This is a dangerous assumption and the Italian *condottieri* experience will show why. No account of mercenary activity from this time can avoid some reference to the political, religious, social, and economic currents that

¹ (ca. 1512-1524) *The Prince AND The Discourses*. Random House, New York, 1950. p. 45.

infused Italian city, state, and country life; accordingly, these shall be engaged as required.

In general, the military system that prevailed in Europe from the eighth to the fourteenth centuries was based on the man-at-arms who was obliged to serve a single master. Armoured heavy cavalry dominated open field engagements, but the rising strength and numbers of castles made those battles less and less decisive. The typical medieval European army comprised many more infantry than cavalry although these foot soldiers were of relatively limited tactical utility. Being untrained and ill-armed, the peasant levies usually did minimal killing and a majority of the dying. Their principal use was in sieges and the decisive importance of the infantry bowmen was exceptional. It was, therefore, quite natural that the principle weapon system of the decentralised and non-market medieval societies tended to be cavalry represented singularly in the person of the armoured knight fulfilling his feudal obligations.² When the cost of these obligations become too onerous, the skilled knight often turned to a paying client. Incidentally, the onerous financial cost of military obligations persists through to the present day as one justification for seeking privatised military options.

Warfare was also a fundamental element in the growth of medieval societies, and with the appearance of paid armies in the later Middle Ages, based on contractual arrangements rather than on tenurial obligations or communal service, the use of mercenary forces to attain political goals had a profound impact on the development of many European states. Rulers engaged in ambitious policies in pursuit of personal wealth and territorial expansion, setting examples which others sought to emulate or were forced to follow.³ This pattern was generally embraced by competing city-states and kingdoms on the Italian peninsula and some authors have asserted that the reliance

² Bean, Richard. 'War and the Birth of the Nation State.' *The Journal of Economic History*, Vol. 33, No. 1 (March 1973), pp. 205-206.

³ Fowler, Kenneth. *Medieval Mercenaries*. Vol. 1. Blackwell Publishers, Massachusetts, 2001. p. ix

on mercenaries contributed to the lessening of their territorial and civic security culminating in the French invasion in 1494, while others seek to attribute responsibility elsewhere.⁴

The confusions of the romanticised Guelf (or alternatively, Guelph) and Ghibelline factions were the theoretical basis of the various struggles enacted throughout the Italian peninsula from the thirteenth century.⁵ A Guelf was a supporter of the Church, or the temporal power of the Papacy, and a Ghibelline was a partisan of the Emperor; a squaring off between monarchism and republicanism. Sandwiched by these two rivalries, Italy found itself the geographical impact point of the claimants' right to exercise international authority and universal power over all western Christendom. From the mid-eleventh to the mid-thirteenth centuries the Popes had proclaimed themselves judges over Christian nations in spiritual affairs, as well as some temporal matters. Pope Innocent III (1198-1216) established the outline of the Papal States that were to remain until the newly united Kingdom of Italy absorbed them in 1870. These formed a wide sash of papal territory extending diagonally across central Italy from the Tyrrhenean to the Adriatic Sea.⁶

At the beginning of the thirteenth century Pope Innocent III refused to be automatically bound to consecrate the candidate chosen by the majority of German princes. Nor would he allow the imperial crown to become the hereditary property of the reigning dynasty of Staufen, which the Ghibelline factions had originally followed. Thus, the emerging alternatives on the Italian peninsula in the Late Medieval period were characterised as the fight between building an empire-like monarchy on the one

⁴ Mallet, Michael. *Mercenaries and Their Masters*. The Bodley Head, Toronto, 1974. pp. 2-3; Swain, Elizabeth Ward. 'The Wages of Peace: the condotte of Ludovico Gonzaga, 1436-1478'. *Renaissance Studies*, Vol. 3, No. 4 (1989), p. 444; Machiavelli, pp. 46-53; Bayley, C.C. *War and Society in Renaissance Florence*. University of Toronto Press, Canada, 1961. p.3; Caferro, William. *Mercenary Companies and the Decline of Sienna*. The Johns Hopkins University Press, Baltimore, 1998. p. xvi

⁵ C.f. A literary work for the College of Cardinals by Saba Malaspina, a functionary from the court of Pope Martin IV, called *History of Sicilian Affairs*, ca. 1280. In Pullan, Brian. *A History of Early Renaissance Italy*. Allen Lane, London, 1973. p. 17

⁶ Pullan, p. 17

hand, and regional independence with the preservation of civic liberty on the other.⁷ It was in this miasma of loyalties and ambitions that much of the hostility between Ghibelline and Guelf parties fermented, drawing various Italian and foreign actors into martial conflict for, nominally, supreme secular and religious power. It was understandably, also a field clear of unified international regulatory authority, a circumstance that also reflects today's international relations situation.

As mentioned above, the feudal system of military organisation which equated armed service with land tenure eventually produced landowners rather than soldiers. One source claims that with the exception of the Normans in southern Italy, there was little Italian involvement in the crusading armies and religious military orders dominant in Europe, resulting in a departure from chivalric traditions. This allowed greater freedom for new and 'modern' military institutions to arise.⁸ Opposing this, it has been argued that as a result of the historical conflict with Turkish Islam, the Italian participation in the Crusades was substantial and continuous in pursuit of Christian ideology, colonisation and revenue, and it was this that greatly enhanced the position of Venice and Genoa.⁹ Whichever may be the more correct,¹⁰ the farmer-soldier was replaced by the individual private soldier who was contracted for service under a captain.¹¹ This bears a striking resemblance to circumstances described previously in Chapter 2. The transition is partly attributed to the cost of maintaining standing armies

⁷ Baron, Hans. *The Crisis of the Early Italian Renaissance*. Princeton University Press, New Jersey, 1966. p. 16

⁸ Mallett. 'Condottieri and Captains in Renaissance Italy'. In *The Chivalric Ethos and the Development of Military Professionalism*. D.J.B Trim, (ed). Brill, Boston, 2003. p. 67

⁹ Paoletti, Ciro. *A Military History of Italy*. Praeger Security International, London, 2008. p. 4

¹⁰ They may well both be correct as the Papal States occasionally made crusading efforts towards the East but without the support of the Italian city-states. *C.f., Popes, Cardinals and War*. D.S. Chambers, I.B. Tauris, London, 2006. p. 27

¹¹ There are various disputed originations for the mercenary companies' first appearance in Italy. See: Waley, Daniel. 'The Army of the Florentine Republic'. *Florentine Studies*. (ed., Nicolai Rubenstein). Evanston, Illinois, 1968. pp. 80-83; Villani, Giovanni. *Istorie fiorentine*, (ed.), Archille Mauri. Milan, 1834. p. 193; Hay, Dennis. *Europe in the Fourteenth and Fifteenth Centuries*. London, 1970. p. 184; Mallet, pp. 25-26.

or employing the citizenry in permanent militias.¹² The soldier relied upon the captain to secure a contract and was rewarded, usually, in cash. This worked to replace the traditional agricultural tenure-for-service arrangement with the professional private soldier. The professional mercenary soldier would then, naturally, seek continuous employment. Decline of Italian communal armies was possibly partly encouraged by either weak, or vigorous, chivalric antecedents and a precocious commercial development which saw theocentric life replaced by an economic one. The new mercantile military professional found fertile ground upon which to prosper in Italy, as there was little universally effective political law or accepted judicial criterion with which to measure the validity of government; this encouraged an arbitrary appreciation of political legitimacy referenced by any successful application of force.¹³ In this early Renaissance paradigm, citizens became excluded from positive control over their security apparatus. This element is examined as a contemporary international issue in Chapter 1 and reappears in Chapter 6.

Italian history of the period has been compartmentalised by at least one historian into three chronological frames: the twelfth and thirteenth centuries; the Age of the Free Burghs, the fourteenth and fifteenth; the Age of the Despots, and the sixteenth and seventeenth; the Age of Foreign Enslavement.¹⁴ While not adhering strictly to these parameters, the foremost designations are illustrative as they broadly indicate an overall progression illuminated here and the latter suffices to inform of the eventual outcome awaiting the unwary modern state (and their citizens) but falls outside this study's purview.

¹² Paoletti, p. 5

¹³ Bueno de Mesquita, D.M. *Some Condottieri of the Trecento*. Annual Italian Lecture of the British Academy, Proceedings of the British Academy, Volume XXXI, Oxford University Press, London, 1946. pp. 2-3.

¹⁴ Symonds, John Addington. *Renaissance In Italy; Age of the Despots*. John Murray, London, 1920. p. 77

Since the twelfth century, individual mercenaries had participated in local wars and by the mid-fourteenth, primarily as a result of truces in the Hundred Years War, the Italian peninsula had become inundated with mercenary companies generally comprised of foreigners.¹⁵ The companies were large autonomous units tied together in loose confederations under the command of the elected captain or *condottiere*, known collectively in Italy as Companies of Adventure and elsewhere as ‘free companies’.¹⁶ The Companies were highly organised, being corporate with a well orchestrated hierarchy of sub-commanders and chancellors. There was also an efficient mechanism that oversaw the democratic distribution of spoils (well regulated standards of behaviour seem to be consistently important to professional military). An air of romance and adventure, likely self-generated, surrounded their endeavours and was reflected in the self-important names they took for themselves including, the Great Company, the White Company, the Catalan Company, the Company of the Rose, the Company of the Hat, the Company of the Star, Company of the Hook, and the Company of St. George.¹⁷ The corporatised private military companies of the present day similarly find it necessary to emphasise their corporate nature and also advertise with evocative names: Executive Outcomes, Sandline International and Blackwater Worldwide, for example. These three exemplars were comparatively very short lived, with the latter two being resurrected under new corporate brandings but were essentially the same physical entities.

A majority of the man-power and leadership of the mercenary Companies in the first half of the fourteenth century was foreign, Germans being particularly well represented. Between 1320 and 1360 more than 700 German cavalry leaders have been

¹⁵ Mallet. 2003, p. 67

¹⁶ Caferro, William. *Mercenary Companies and the Decline of Sienna*. The Johns Hopkins University Press, Baltimore, 1998. p. xiii

¹⁷ Caferro. ‘Italy and the Free Companies of Adventure in the Fourteenth Century.’ *The Historian*, Vol. 58, No. 4 (1996), p. 795; Caferro (1998) Table 2.1, pp. 19-20.

identified as active in Italy.¹⁸ It would appear that they were viewed with distaste by some Italians as in 1385 it was recorded: ‘This plague of the Companies, first devised within our memories by Duke Werner of Urslingen, some forty three years ago’.¹⁹ Between 1343 and 1359 the Great Company, mainly German in composition and under the leadership of ‘Duke Werner’ and his successors, became a highly coherent and professional institution, both as an army and as an organic society of men governing their own affairs and recognising no external superior.²⁰ Their swath of predations extended from the northern reaches of Savoy to the southern borders of Naples and in the absence of any effective military resistance were in a position to demand ‘contracts’ between themselves and the largely defenceless Italian communes which they manipulated and terrorised successively.²¹ In the absence of a monopoly violence authority, the security goods supplied were nominal and the principal/agent relationship became heavily distorted. Currently, the international regulatory environment mirrors this early lack of singular authority.

The relationship distortion was a by-product of the contractual nature of mercenary work; when unemployed, you were free to conduct business on your own account against any profitable target. The contracts were time specific and formalised the company’s agreement not to enter a given territory. In 1342, the Great Company was paid off in turn by the cities of Cesena, Perugia, Arezzo, Siena, and several Lombard communes. Later, in 1353 and now under the command of Montreal d’Albarno (called Fra Moriale by the Italians), they returned and extorted payment from Pisa, Arezzo, Florence, Siena, and the Malatesta of Rimini. At the peak of its power in

¹⁸ Mallet, Michael. ‘Mercenaries’. In Keen, Maurice. *Medieval Warfare*. Oxford University Press, London, 1999. p. 218; Caferro (1996), p. 798

¹⁹ Guasti, Cesare. (ed). *Capitoli del Comune di Firenze: Inventario e Regesto*. Florence, 1866. i. 226. In, Bueno de Mesquita. p. 3. Caferro (1998), p. 3, puts the first appearance of Werner in Italy at 1339.

²⁰ Ricotti, E. *Storia delle Compagne di Ventura in Italia*. Turin, 1844.

²¹ Mallet, in Keen, p. 218

1353, the Company numbered some 10,000 men.²² The career of the Great Company terminated in 1359 at Campo alle Mosche, after a successful campaign of devastation up and down Italy.²³ The Florentine victors had raised an army that included a substantial contingent of foreign mercenary troops only after having appealed unsuccessfully for unity among the Italian powers.²⁴ The argument for union having been denied, in 1352 the Florentine government issued an ordinance which embodied the support of a mercenary army in the financial administration of the Republic.²⁵ This helped legitimise the practice and provided a normative model that others followed. It is possible that this historic point marks where the Italians forewent an opportunity to increase political and therefore citizen control of their security apparatus and their public security goods, by optimistically relying solely upon fiscal or free-market control mechanisms.

In 1360, the Peace of Brétigny, which called for a halt in the Hundred Years War, left many English and French soldiers without employment. The papal court at Avignon, being engaged in restoring its temporal authority in the States of the Church, invited them to profit by crossing the Alps into Italy.²⁶ This formed part of Pope Innocent VI's new Italian offensive which began in the early 1350's and sought to impose peace by force and ingenuity in dealing with the regions warlords and itinerant mercenary companies; enemies of the Church were proclaimed heretics or tyrants and armed proponents were promised Papal Indulgences.²⁷ During this period, a designated 'tyrant' Galeotto Malatesta of Rimini, who was defeated by papal mercenary forces

²² Caferro. (1996), p.796 + p. 798. By contrast, the entire French army that fought at Agincourt in 1415 contained, by the most generous estimate, 6,000 soldiers. *C.f.* Robert Boutruche. 'The Devastation of Rural Areas during the Hundred Years War and the Agricultural Recovery of France.' In *The Recovery of France in the Fifteenth Century*, (ed.) P.S. Lewis. Great Britain, 1971. p. 31

²³ Caferro (1998), p. 9, claims the final defeat of the Great Company to have been at the hands of the White Company (made famous by John Hawkwood), in 1361 under the command of German Albert Sterz. This was brought about by the defection of Hungarian mercenaries who refused to fight against their countrymen in the White Company – a not uncommon scenario.

²⁴ Canestini, G. 'Documenti per servire alla Storia della Milizia Italiana'. (*Archivio Storico Italiano*, xxxix), 1851.

²⁵ Bueno de Mesquita, p. 4

²⁶ *Ibid*, p. 4

²⁷ Chambers, p. 29. Also, it is noteworthy that in a current setting, the US government has offered citizenship to foreign private military actors they have engaged in Iraq and Afghanistan.

under warrior-Cardinal Gil Albornoz at Padermo in June 1355, had previously paid tribute to the Great Company for protection in 1353. This Malatesta was then employed by Albornoz as a military commander in the service of the Church.²⁸ Clearly, loyalty was only a matter of negotiation for this professional mercenary and remains a concern of modern critics. Also instructive is a later tract by Lorenzo Valla (*ca.* 1443-1444) that criticises Pope Eugenius IV's wars and the aggressive trend in papal politics:

‘Popes use war, not law, against peaceful cities and sow discord between cities and princes; they squander money taken from people of goodwill on hordes of cavalry and foot soldiers.’²⁹

Broadly indicative of the influence mercenary soldiers and their new weapons had on actual military engagements of a later period, is the instance of a battle in the war fought over the Angevin succession claim to the kingdom of Naples and Sicily in 1460; again apparent is the capricious nature of mercenary loyalty. Pope Pius II's ally, King Ferrante of Naples, made an ill-advised assault on the castle of Sarno at the urging of the Pope's *condottiere* Simonetto. The attackers were decimated by the handguns (*schiochetti*) of foreign mercenaries who had previously deserted from Ferrante's army – and Simonetto was himself killed. The professional use of new weapons (and tactics) was firmly established by mercenaries as the means by which they and their paymasters could triumph, a fact not lost on papal and Aragonese armies.³⁰ This imitates the development of Greek hoplites through to peltasts, weak state navies to privateers, African mercenaries to modern private military companies, and the necessity of utilising private contractors to manage complex modern weapons systems.

The change in the nature of war in early fourteenth century Tuscany suggests that developments can be attributed to a combination of military and economic factors that allowed the expansion of city-states into territorial republics or principalities. The

²⁸ *Ibid*, p. 30; Swain, p. 443

²⁹ Miglio, M. *Italia e Germania: Liber Amicorum Arnold Esch*. Tübingen, 2001. pp. 226-233. In Chambers, pp. 51-52.

³⁰ Chambers, p. 58

employment of heavily armed mercenary cavalry, spearheading civic armies, was instrumental in driving tactical innovation and political change. An abundance of hired troops allowed for the enlargement of states as conquered territories could be effectively garrisoned but owing to the high cost of mercenaries only the wealthiest cities could retain sufficient numbers to achieve this (the privatisation of public security goods). Consequently, the political organisation and military systems which had prevailed in the thirteenth century were rendered obsolete.³¹ By the end of the thirteenth century paid military service became a standard feature of European warfare.³² No particular evidence exists to suggest that this was not also the case throughout Italy.

Upon the death of Henry VII in August 1313 at Buonconvento, German cavalry comprising some ten mercenary companies were sent to assist Pisa in her defence against expected aggression by a Guelph alliance that would normally have enjoyed military superiority over the Ghibellines.³³ Exact mercenary numbers are uncertain but 1,000 is proposed. These were placed under the command of Ugucione della Faggiuola, an Italian *condottiere* previously the vicar in Genoa under the late Emperor. The Pisans were able to decisively defeat the attackers. A later campaign in which they were used was made against the neighbouring city of Lucca in November 1313, where the foreign mercenary cavalry comprising between 600 and 800 men successfully led the assault against the defending Guelph troops.³⁴ According to a Sieneese chronicler, the German knights wore Pisan surcoats making them indistinguishable from the mounted levies of the city they championed - apparently a tactical innovation. Ruthlessness (rather than chivalry) was further evidenced by widespread burning and slaughter, and pleas of 'quarter' failed because of the language incompatibility. Eyewitness accounts

³¹ Green, Louis. 'Changes in the Nature of War in Early Fourteenth Century Tuscany.' A paper presented at the Australian Historical Association conference, Sydney, August 1982. p. 1

³² Mallet, in Keen, p. 209

³³ Villani, Giovanni. *Chronicle*. VI, 79. (ed) F.G. Dragomanni. Florence, 1844, in Green, p. 3. Earlier figures from a league Lucca had with Florence in 1282 show her able to contribute 114 knights to Florence's 166, in Meek, Christine. *Lucca 1369-1400*. Oxford University Press, London, 1978. p. 1

³⁴ Green, p. 3

report a remarkable level of professional discipline in the mercenary cavalry that enabled uniform movements effected by concise communication.³⁵ After the Lucchese sued for peace, and the inevitable conspiring and betrayals, Lucca became the possession of Faggiuola who ruled it for the next two years by means of the power of his mercenaries. In 1316, he was supplanted by Castruccio Castracani, who by 1320 had succeeded in getting himself made *signore* for life. This was a return to tyrannical rule and indicates the replacement of a principal by their agent.³⁶ This situation can be traced back to the abdication of a citizen-oriented military in favour of ‘cheaper’ private military alternatives and should be of interest to contemporary enthusiasts of similar transformations in state militaries.

These early scenarios, at this stage uncommon, are indicative of how the employment of disciplined foreign mercenary knights began to alter the traditional method of Italian war, and was to characterise future engagements. The capture of Lucca in 1314 appeared to reflect the previous practice of city ownership transferring between one factional allegiance and another. However, control was not restored to the Ghibelline party but remained under tyrant rule, whose home base of Pisa served as a staging point for the acquisition of Lucca, and both were facilitated through employment of an increasingly professional mercenary force.³⁷

The period from 1350 to 1450 saw unprecedented military activity on the Italian peninsula, characterised by wars of increased cost and scale, and the profligate use of increasingly expensive and specialised mercenary soldiers whose threat was not confined only to times of direct conflict. The infra-regional battles of the thirteenth century evolved into inter-regional ones in the fourteenth and fifteenth centuries. Expansionist policies of wealthy cities such as Milan, and Florence’s drive to extend its

³⁵ Lisini, A., and Iacometti, F. (eds) *Rerum Italicarum Scriptores*. (new ed.) XV, pt. 5, 98. In Chambers, p. 3

³⁶ *Signore* was the Italian term for a lord, tyrant, or dictator - often indistinguishable. Law, John E. *The Lords of Renaissance Italy*. The Historical Association, London, 1981. p. 30.

³⁷ Chambers, p. 4

traditional borders, sparked much of the hostilities. The rivalry between branches of the Angevin family and the Great Schism of 1379 brought continuous war to the Kingdom of Naples and the Papal States.³⁸ All this served to make warfare the most expensive endeavour of the Italian states.³⁹ Moreover, the uncontrolled proliferation of professional private military did not increase economic security, indeed the reverse was to occur.

A measure of the expenditure channelled to the *condottieri* for their services, can be gained from the record of the mercenary incursions suffered by the Republic of Siena. These may also serve to demonstrate that the constant draining away of resources eventually left them vulnerable and exposed to roaming private military and external political dominance as a result of an inability to afford bribes, effect long-term defence, or to train and sustain their own citizen militia. This period in Siena's history suggests how the financing of mercenary force through the constant disbursement of resources directly to *condottieri*, and the external interests indebting them to do so, eventually resulted in loss of political control of the state and its controlling apparatus, causing administrative decentralisation and confusion.⁴⁰ A brief audit of the persistent level of threat that the Republic of Siena faced from mercenary company raids between 1342 and 1399 is shown in Table 1 (p. 55), and is followed by the bribes extorted from them in Table 2 (p. 56). The potential for a contemporary re-enactment of this deleterious progression, if the principal cannot exercise controlling authority over the agent, is concerning.

³⁸ This year has been given significance as the year that (among other distinctions) foreign mercenary companies were mostly supplanted in Italy by Italian mercenaries. Caferro, (1998). p. 11

³⁹ Caferro. William. 'Warfare and Economy in Renaissance Italy, 1350-1450'. *The Journal of Interdisciplinary History*, XXXIX:2, (Autumn 2008). p. 169

⁴⁰ Caferro (1998), p. 172

[Note: The autumnal demarcation is American].

Table 1: Major Mercenary Raids in Sienese Territory, 1342-1399

1342, Sept.	Werner of Urslingen, The Great Company
1350, April	Werner of Urslingen, The Great Company
1354, June	Montreal d'Albarno, The Great Company
1357, fall	Conrad of Landau, The Great Company
1359, June	Conrad of Landau, The Great Company
1360, summer	Conrad of Landau, The Great Company
1362, spring	Hannekin Baumgarten
1363, fall	Niccolò da Montefeltro, Company of the Hat
1364, summer-fall	Hannekin Baumgarten and Albert Sterz - Company of the Star
1365, May	Albert Sterz, Company of the Star
1365, summer	John Hawkwood, White Company
1366, spring	John Hawkwood, Ambrogio Visconti, and Johann of Hapsburg - Company of St. George
1367, winter	John Hawkwood
1369, June	"Misser Anisi" and "Misser Franchi" – soldiers of Emperor Charles IV
1370/71 spring	Lucius of Landau and Frederigo of Brescia
1375, summer	John Hawkwood
1379, May-June	John Hawkwood and Lucius and Eberhard of Landau
1380, fall	Charles of Durazzo
1380, fall	Company of Bretons
1381, spring-summer	War with the Bretons
1381, fall	John Hawkwood and John Ban
1382, winter	Villanozzo of Brumfort and Alberico da Barbiano - Company of the Hook
1383, winter	John Hawkwood, Richard Romsey, and Giovanni d'Azzo degli Ubaldini – Company of the Rose
1384, spring	Company of Bretons
1384, summer	John Hawkwood, Richard Romsey, and Giovanni d'Azzo degli Ubaldini – Company of the Rose
1385, summer	Eberhard of Landau, John Beltoft, Tadeo Pepoli, and John Hawkwood
1386, winter	Boldrino da Panicale and the Bretons
1387, winter	Bernardone della Salla and the Bretons
1388, summer	John Beltoft
1392, summer	Cecchino Broglia, Biordo de' Michelotti, Brandolino of Forli, Giovanni da Barbioni, Azzo da Castello, and Count of Carra – Company of St. George
1393, fall	Company of Bretons
1393, winter	Azzo da Castello, Biordo de' Michelotti, Conrad of Eichelberg
1394, summer	Biordo de' Michelotti, Azzo da Castello
1395, winter	Bernardone della Salla and the Bretons
1395-96, spring	Cecchino Broglia
1396, summer	Bartolomeo da Prato, Lodovico Cantelli, and the "Florentines"
1399, summer	Cecchino Broglia and Count of Carrara

From records of the Sienese chronicle, Capitole, Biccherna budgets and Consistoro and Consiglio Generale deliberations. The Florentine *Chronica volgare* of Piero di Giovanni Minerbetti, and the Perugian "Cronaca" of Del Graziani, and the *Cronaca di Pisa* of Ranieri Sardo.⁴¹

Note: Some of these raids were not conducted solely on account of individual condottiere but were at the pleasure of opposing states or cities. For example, John Hawkwood was on the payroll of Florence (a bitter trade rival of Siena) who granted him a semi-permanent post (*condotta in aspetto*) after the War of Eight Saints in 1381. The Pope also had an interest in regaining papal lands and was a prolific mercenary employer.⁴²

⁴¹ Caferro (1998), Table 2.1, pp. 19-20.

⁴² *Ibid*, p. 19, + pp. 30-31.

Table 2: Bribes Paid by Siena to Mercenary Companies, 1354-1399
(in gold Florins)

1354	Montreal d'Albarno – Great Company	13,324
1357	Conrad of Landau – Great Company	13,000
1364	Hannekin Baumgarten and Albert Sterz – Company of the Star	38,650
1365	Albert Sterz	8,000
1366	Ambrogio Visconti	10,500
1370/71	Lucius of Landau and Frederigo of Brescia	8,000
1375	John Hawkwood	30,000
1379	John Hawkwood and Eberhard, and Lucius of Landau	32,000
1380	Charles of Durazzo	11,000
1381	John Hawkwood and John Ban	4,000
1382	Villanozzo of Brumfort and Alberigo da Barbiano – Company of the Hook	10,000
1383	John Hawkwood, Giovanni d'Azzo degli Ubaldini, and Richard Romsey	7,000
1384	John Hawkwood, Giovanni d'Azzo degli Ubaldini, and Richard Romsey	11,000
	Enguerrand of Coucy	7,000
	Bernardone della Salla and the Bretons	2,000
1385	Eberhard of Landau, John Beltoft, Tadeo Pepoli, and John Hawkwood	14,000
1386	Boldrino da Panicale	2,000
1387	Bernardone della Salla and the Bretons	9,000
1388	John Beltoft	9,000
1392	Cecchino Broglia, Brandolino of Forli, Biordo de Michelotti, Giovanni da Barbiano, Azzo da Costello, and Count Carrara – Company of St. George	5,000
1393	Bretons	2,700
	Azzo da Costello, Biordo de' Michelotti	3,600
1395	Bernardone della Salla and the Bretons	2,875
1396	Bartolomeo da Prato and the "Florentine" Company	3,400
1399	Cecchino Broglia and the Count of Carrara	5,600

From Biccherna and Regolatori budgets, city council deliberations, Concistoro records and some actual agreements (Capitoli) made between a Company and a commune.⁴³

In an attempt to combat the comprehensive and enduring onslaught of the now normative mercenary activity, Siense officials were forced to hire *condottieri* and pay bribes; usually with loans sourced externally, by forcing their own citizens into compulsory loans, and introducing successive regimes of extra-ordinary commodity taxes on an already heavily burdened population.⁴⁴

This illustrates the problematic nature of mercenary employment and unemployment in the Italian period. When outside of contract, the past employer was liable to become the future mark when the mercenaries employed themselves. It proved to be a very costly series of undertakings for Siena and served to undermine the states' fiscal resources, citizen productivity, and eventually political independence. This turned

⁴³ Caferro (1998), Table 3.1, pp. 37-38.

⁴⁴ Green, p. 10

the city into one of second-class status and of middling economic power.⁴⁵ A primary creditor and military supplier of the Sieneese was Giangaleazzo Visconti of Milan, who, by supplying funds, mercenaries, and military aid over a period of time, manipulated and indebted the city's administrators and citizens, forcing them to become subservient to his desires.⁴⁶ In 1395, the Visconti purchased the title of Duke of Milan and was then invited, by the now compliant and exhausted Sieneese, to take responsibility for the administration and protection of their state. This marked the end of Sieneese independence.⁴⁷ This also concluded their principal/agent reversal.

Tables 1 and 2 are not unrepresentative of the larcenous nature of the professional mercenary in Late Medieval and pre-Renaissance Italy, and the lack of effective control that political authority or citizen constituencies could exert over them. Mercenaries and their companies were the prevailing provider of security goods in Italian cities, communes, and territories; civic police duties were also carried out by hired foreigners.⁴⁸ They represented the leading military professionals, in both weapons and tactics.⁴⁹ It would appear also, that the more 'professional' or competent they became, the greater their ability to extort fees for applying or withholding their various services. They were able to demand payments to attack or defend, and, not to attack or defend - and often any combination thereof. Table 1, shows that the Companies were able to operate as 'immortal' corporate entities, i.e., when a leader died or retired, another stepped into place and company activity continued – shown by the Great Company under Urslingen, then d'Albarno, then Landau. The companies also

⁴⁵ Caferro, (1998), p. 172

⁴⁶ The Visconti was making payments in gold directly to the Sieneese Treasury late in the 14th. century. In Caferro (1998), p. 166

⁴⁷ Caferro (1998), p. 165

⁴⁸ Bowsky, William M. 'The Medieval Commune and Internal Violence: Police Power and Public Safety in Siena, 1287-1355.' *The American Historical Review*, Vol. 73, No. 1 (Oct 1967), pp. 7-11. By the mid-1330's there was one foreign policeman for every 145 Sieneese. Earlier estimates suggest a ratio of 73:1. C.f. Bowsky, 'The Impact of the Black Death upon Sieneese Government and Society.' *Speculum*, XXXIX (Jan 1964), esp. pp. 5-11.

⁴⁹ This would continue to be the case into the sixteenth century. C.f. Maurizio Arfaioli. *The Black Bands of Giovanni: Infantry and Diplomacy during the Italian Wars (1526-1528)*. Pisa: Edizione Plus. 2005.

emphasised their corporate nature by referring to themselves as ‘societies,’ the same term used by contemporary Italian businesses.⁵⁰ This would appear to be an attempt to make their activity normative and a similar attempt can be seen in the claims of modern private military companies that they are just businesses who provide goods and services.

Additionally, Table 1 tracks an evolution from foreign companies operating as large units mid-century, to individual *condottiere* (predominantly Italian) then taking many, but not all, leading roles.⁵¹ In the absence of a monopoly political authority, this allowed and doubtless encouraged a mercenary free-for-all. Table 2 indicates that the city of Siena was able to afford considerably higher amounts for mercenaries’ bribes in the middle of the fourteenth century but within fifty years the fiscal burden upon her citizens, to satisfy the extortions, was unsustainable. There occurred elsewhere and over time in Italy, similar patterns of capital and influence transferral that would enable enterprising *condottieri*, and those who could afford them, to eventually usurp substantial political authority, achieved when citizens and their cities became the terminally mortgaged vassals of those they had paid to protect them.⁵²

The magnitude and persistence of military spending among the competing powers attracted highly professional and ambitious *condottieri* but also aided in transforming them into highly predatory fiscal agents as they competed for, negotiated, and forced lucrative contracts with cities, communes, and city-states. Wars invariably ended with truces and peace, along with enthusiastic looting. Much of the actual fighting was conceived in fiscal terms rather than territory gained or lost and often involved the assessment of large indemnities.⁵³ At the conclusion of its war with Pisa in

⁵⁰ Caferro (2006), p. 67

⁵¹ Symonds, quoting Sismondi (Vol. v. p. 207): ‘In the middle of the fourteenth century all the soldiers who served in Italy were foreigners, at the end of the same century they were all or nearly all, Italian.’ p. 124

⁵² Green, p. 18

⁵³ Bernabò Visconti, ruler of Milan, wrote of waging ‘good fat war’ against his opponents which referred to the financial gain for himself. *C.f.* Gene Brucker, *Florentine Politics and Society, 1343-1378*. Princeton, 1962. pp. 314-315.

1364, Florence was assessed an indemnity of 100,000 florins – this exceeded the sum of the Medici Bank’s capital formation at its zenith and was equivalent to Pisa’s yearly revenue.⁵⁴ Venice required Padua pay 250,000 ducats in war reparations in 1373 – nine times normal (Carrara) revenue. The peace of Genoa nineteen years later, mandated that Padua pay 500,000 ducats. Following the War of Eight Saints, Florence’s indemnity to the Pope was 250,000 florins – a sum equal to its annual revenue.⁵⁵ Comparatively, the city of Milan paid 288,720 gold florins for the services of 1,203 mercenary cavalry for its war with Florence in 1390. This represented a sum four times the annual budget of a mid-sized city such as Lucca.⁵⁶ It is apparent that the reliance on a contractual fiscal relationship alone by city-states and communes, without any attendant political or civil interest by their private military agents, was untenable.

A standard *condotta*, or contract, formalised what level of professional service was delivered to the client and was also the mechanism with which fortunes could be leveraged by enterprising *condottieri*. Implicit in the *condotta* was a time or fund-limited loyalty that might see one’s employer become one’s adversary the following year. It was not what might be called fair dealing in the modern sense as powerful *condottieri* were the premier security providers and in a position to coerce their demands with the application or withdrawal of force with no reference to any particular authority, political or otherwise. The most successful military commanders were those who developed an advanced level of finesse at assuring their own fortunes, fiscal and political, during the March bargaining season more than by just the battles fought during the summer months.⁵⁷ The *condotta* specified three essential elements: the size of the soldier’s command, the duration of service, and the fee. The command unit, by mid-

⁵⁴ Caferro (Autumn 2008), p. 175; Consider that in 1341, Mastino della Scala agreed to sell Lucca to Florence for 250,000 florins. Meek. p. 3

⁵⁵ Caferro. (Autumn 2008), p. 175

⁵⁶ Caferro (2006), p. 79

⁵⁷ Swain, Elizabeth Ward. ‘The Wages of Peace: the condotte of Ludovico Gonzaga, 1436-1478.’ *Renaissance Studies*, Vol. 3, No. 4 (1989), pp. 444-445. Battles were fought throughout the year by some *condottieri*.

fifteenth century, was usually specified as the number of cavalry, or lance units, combined with a number of foot soldiers. Service duration was the term of active duty (*ferma*) and a period following during which the employer had the option to renew (*beneplacito*). Ludovico Gonzaga, in 1436, contracted to the Visconti of Milan to fight for one year, with one additional year of *beneplacito*. In 1447, he was contracted to serve as captain-general of the Florentine army in Lombardy, leading 400 lance-units and 300 foot soldiers. These numbers were adjusted for a peace-footing and were 300 and 200 respectively. This last change was a new ploy by the authorities in an attempt to keep costs down but also attempted to loosen the strictures of traditional *condotta* that placed too much power and money in the hands of their *condottiere*.⁵⁸ This would indicate that there was an awareness of the dangers of a principal/agent inversion and this same awareness is, worryingly, not exhibited in contemporary civilian attitudes.

One of the greatest mercenary captains in fourteenth century Italy was the Englishman, John Hawkwood. During a more than thirty year career, his contribution to Italian history was described thus: ‘He managed his affairs so well that there was little peace in Italy in his times.’⁵⁹ James Granger, the nineteenth century writer, likened Hawkwood to the Scottish patriot William Wallace as a paradigm of military prowess.⁶⁰ He was a common soldier in the battles of the Hundred Years war in France and came to Italy with the White Company in 1361, becoming a captain in 1363. A model that lesser mercenary captains might wish to emulate, it is indicative of the state of security that such men encouraged in Italy as one account of him states:

From that time [1363] until his death in 1394, he rode with local armies in legitimate service and at the head of marauding companies when unemployed. Italian states alternately sought to hire him and to protect themselves from him. When he died, the Florentines, his last employer, buried him with great ceremony in their cathedral.... The historian Ferdinand Gregorovius could not help but point

⁵⁸Swain, p. 445

⁵⁹ Sacchetti, Franco. *Il Trecentonovelle*, novella 181, postscript, pp. 448-489. *Ca.* 14th. century. In Caferro (2006), p. 1

⁶⁰ Granger James. *A Biographical History of England from Egbert the Great to the Revolution*, Vol. 1, 4th. Ed. London 1804. pp. 59-60. In Caferro (2006), p. 1

out the irony that Florence had denied its greatest citizen, Dante, a final resting place in the city but afforded a place to that “robber of a Hawkwood”.⁶¹

Despite his deleterious effect on Italian internal security, Hawkwood was a prolific professional purveyor of war and helped transform it into a lucrative business. He took pride in military professionalism and was known for his fidelity and honesty, establishing an unprecedented degree of unity and loyalty in his company. It would seem that his appearance marked the decline of the ‘free companies’ and the emergence of a new type of military man who won contracts with generalship and personal qualities rather than by the size or prowess of his company.⁶² In time, Hawkwood was to become a papal feudatory which recognised the process of attaching a mercenary captain to the state, a novel position for a foreign mercenary.⁶³ It also assisted in cementing a new precedent of extended or semi-continuous service for one employer. Whether this situation was advantageous to all parties is unclear.

It was not unusual for grants of land, marriage, pensions, and citizenship - accepted by the more forward looking captains in fourteenth century Italy - to be offered by employers looking to generate greater fealty and thereby introduce some measure of control. The *benepiacito* and the grants of extra-contractual inducements expressed the employers’ hope that their *condottiere* would remain settled and perhaps consider the position permanent. The Venetians gave an obscure German captain Robotus von Engestorp land and citizenship in 1373.⁶⁴ The Perugians offered the same for Albert Sterz and Hannekin Baumgarten in 1364.⁶⁵ By mid-fifteenth century, the terms of service lengthened and many soldiers became more or less contracted to a single

⁶¹ Caferro (2006), pp. 1-2. *C.f. Westminster Chronicle*, p. 521

⁶² Mallet (1974), p. 39

⁶³ *Ibid.* (1974), p. 41; Caferro (2006), p. 344

⁶⁴ Selzer, Stephan. *Deutsche Soldner im Italien des Trecento*. Tübingen, Germany, 2001, p.110

⁶⁵ ASPe, Conservatore delle Moneta, 13, fol. gv.

employer.⁶⁶ Clearly, an interest in the state where the military and security goods were supplied, was deemed desirable to effect further control of the agent.

An example of this single-employer trend would be the *condotta* between Giovanni Bentivoglio and Ferrante, King of Naples, dated 16 July 1467. It promised to pay 1,000 ducats a year for life, on the understanding that a like amount would be paid by Florence and Milan. The contract is notable for the absence of reference to number or types of troops to be supplied by the *condottiere* – suggesting that the undertaking was political rather than strictly military.⁶⁷ Another contract dated 20 February, 1493 confirms the title of Governatore Generale (of Bologna) for Bentivoglio and stipulates a stipend of 12,000 ducats in peace and 18,000 in war. The troop allocations are: 100 men-at-arms and twenty archers in peace, 130 men-at-arms and 30 archers in war. A feature of the contract is the *condottiere's* stipend is not related to the number of troops he must supply; his salary rises independently with the growth of his political value to his employer while the company formations remain unchanged.⁶⁸

A further *condotta* was given on the 12 April 1496, following the incursion into northern Italy by Charles VIII of France in 1494. Letters from the invading monarch to Bentivoglio, express the extent of duplicity and self-service inherent in *condottieri* and convey a Machiavellian sense of how they attended the changes in Italian territorial integrity and political security: ‘...thanking him for having facilitated the passage of French troops through Bolognese territory, begging him to persevere in his good offices and promising to use his influence to secure a cardinal’s hat for Antongaleazzo Bentivoglio.’⁶⁹ As matters transpired, Charles VIII’s venture was unsuccessful on that occasion and Bentivoglio was not inclined to support such failure but these events heralded the twilight of Italian independence and the pre-dawn to Symonds’ age of

⁶⁶ Swain. p. 445

⁶⁷ Ady, Cecilia M. ‘The Archivio Bentivoglio at Ferrara.’ *The English Historical Review*, Vol. 64, No. 252 (July 1949), p. 354

⁶⁸ *Ibid.* p. 356

⁶⁹ *Ibid.*, pp. 366-367.

foreign enslavement. The reliance on cash disbursements alone, by Italian state and city principals, to control their private military agents proved to be a costly error.

A combination of rising ambitions, competing ideologies, emergent cash economies, economic and martial rivalry enabled the Italian *condottieri* to achieve or influence primary positions in Italian affairs independent of civilian considerations. A lacuna in comprehensive civil authority saw the professional mercenary captain emerge both politically and militarily as a significant and influential states-man-like figure in the resultant power vacuum. This was problematic as the interests they served were not permanently aligned to, nor controlled by, any particular civil principal. There was therefore no singular objective greater than pecuniary advantage for the individual mercenary and a similar observation could be made of their employers who were nominally concerned with Guelf and Ghibelline notions. Though the various Italian political principals may have managed to supplant foreign mercenaries with their own local agents, the absence of Italian political cohesion and central control mechanisms generally enabled *condottieri* to deteriorate portions of the peninsula's financial and administrative strength, eventually inverting the principal/agent relationship. Their persistent and largely unchecked parasitic depredations allowed and perhaps encouraged external powers to intercede and this ultimately undermined Italy's territorial independence. That no single civilian authority could control the *condottieri* was an instrumental element in the perpetuation of a territorial security void. This factor seems to have also encouraged a growth in professional private militarism as widespread competition for contracts was fought out in an adversarial 'free-market' environment. Following on from this, the provision of public security goods that was the impetus for privatisation of military functions became a fiction. The sole reliance on a privatised free-market approach to security control led to a principal/agent role reversal. While not attributing the whole of early Italian security degeneration to the *condottieri*, it must be

considered that private military companies were complicit in its delivery. Without active civilian participation in the civil/military arrangements, controls and processes that modern democratic states enjoy, the current regulatory environment could permit a similar outcome trajectory.

Chapter 4

Case study 3: **Privateers, ca 1400-1813**

'...every possible encouragement should be given to privateering in time of war with a commercial nation.'

Thomas Jefferson.¹

A class of private fighter alternately maligned and applauded in the literature is the state-sponsored maritime privateer.² An early lack of comprehensive political control and consistent regulatory supervision by immature states frequently encouraged and invigorated private investment in maritime warring but also germinated some privateer's unsponsored and therefore illegal degeneration into piracy. Considerable military, security, and economic gains resulted from the political deployment of civilian privateers. In the absence of satisfactory regulatory enforcement, the developmental phases of privateering often generated anarchic security conditions on the high seas that disturbed international relations with friendly states. The gradual evolution of English privateering and the more hurried American experience give early perspectives on civilian control and participation mechanisms that, in part, symbolise some of the modern tensions between a 'public' versus 'private' approach to international defence and security arrangements, although played out in a pre-modern maritime environment. In current the circumstances of defence resource retrenchment it is surprising that the benefits of a well orchestrated and controlled private force, maritime or otherwise, are not of more interest to international security orchestrators.

Depending on the practicalities of politics and economics, privateers would ideally serve a sovereign or nation-state. Less ideally they would just serve themselves

¹ Ca. 1812. He continues: *'Our national ships are too few in number... to retaliate the acts of the enemy... by licensing private armed vessels, the whole naval force of the nation is truly brought to bear on the foe'*. Sechrest, Larry J. 'Privateering and National Defense: Naval Warfare for Private Profit.' Working Paper Number 14. The Independent Institute, Oakland. September 2001, p. 7

² Kert, Faye M. *Prize and Prejudice: Privateering and Naval Prize in Atlantic Canada in the War of 1812*. International Maritime Economic History Association, St. John's, Newfoundland. 1997, pp. 4-5.

when their market collapsed, became redundant or politically inconvenient, and degenerate into piracy. This has often led to a muddling of the descriptors: a privateer was a privately funded state or sovereign-legitimated maritime military agent and a pirate had no such state or sovereign sponsorship and was merely an illegal, armed maritime actor. By narrowing an adversary's economic arterial flow while simultaneously augmenting the home-state's fiscal strength, the contribution made by sanctioned, armed private vessels was of considerable importance to developing nation-states.³ Poorly resourced government navies (England, France, Spain, and later, America) tended to only fight naval engagements between themselves without generating much needed financial returns. In the absence of significant public navies whose formation was limited by an as yet underdeveloped taxation base (and therefore an underdeveloped civilian engagement in state affairs), the privately funded maritime merchant-fighters represented the most credible economic and military choice for cash strapped warring states. Ineffective policing of the high seas and the lucrative rewards to be gained also encouraged a cavalier attitude among some privateers, merchants, and officials, towards the early legal strictures a sovereign or state imposed, leading to opportunistic incidents of maritime piracy.⁴ Were this casual attitude toward regulatory propriety to widely infect the contemporary international operating environment of private military companies, it might be expected that similar defence and security dilemmas would evolve.

A general working definition of the term privateer (a conjunction of 'private' and 'volunteer') recognises that it was a privately owned armed ship or the commander of such a ship, licensed to wage war on the ships of a named foreign country in reprisal for losses suffered by the owners resulting from (most usually) economic aggressions by

³ Tracy, James D. 'Herring Wars: The Habsburg Netherlands and the Struggle for Control of the North Sea, ca. 1520-1560.' *The Sixteenth Century Journal*, Vol. 24, No. 2 (Summer 1993), pp. 257-261.

⁴ Pistono, Stephen P. 'Henry IV and the English Privateers.' *The English Historical Review*, Vol. 90, No. 355 (April 1975), p. 322

nationals of that country.⁵ The licenses were termed ‘letters of marque’, ‘letters of reprisal’ or ‘letters of marque and reprisal’. They were originally issued by the ruling sovereign, but the sale of them became a perquisite of the officer responsible for administering the laws of the sea in the Admiralty court - in England the Lord (or Lord High) Admiral, in France the Admiral of France.⁶ The actual origination of privateering would appear to have its roots in the ancient custom of reprisal. The phrase ‘private-man-of-war’ was not coined until 1646 and the term ‘privateer’ dates back only to 1664.⁷

Consequent to the onset of war, the Lord Admiral of England received a special commission from the Crown under the Great Seal to grant letters of marque and reprisal against the enemy, this power being absent from his patent. Accompanying this, the King would direct the Admiral with articles and orders to be observed by the private men-of-war acting under the issued letters. This method was similarly used in other European countries. The earliest known examples are two letters issued by Henry III of England in February 1243, one to George Pyper, master of the *Le Heyte* and the other jointly to Adam Robernolt and William le Sauvage.⁸ The content being:

Relative to annoying the King’s enemies. The King to all etc., Greeting. Know ye that we have granted and given licence to... and... and their companions whom they take with them, to annoy our enemies at sea or by land wheresoever they are able, so that they shall share with us half of all their gain; and, therefore, we command you neither to do, nor to suffer to be done, any let, damage or injury to them or their bark [a sea vessel] or other ship or galley which they may have; and they are to render to the King, in his wardrobe, the half of their gain.⁹

Henry IV of England found the strenuous endeavours of privateers to be quite vexing in the early fifteenth century. A contemporary of the monarch is recorded complaining that unsanctioned privateering, or piracy, had become so prevalent that the

⁵ Risso, Patricia. ‘Cross-Cultural Perceptions of Piracy: Maritime Violence in the Western Indian Ocean and Persian Gulf Region During a Long Eighteenth Century.’ *Journal of World History*, Vol. 12, No. 2 (Fall 2001), p. 298

⁶ Macintyre, Captain Donald. *The Privateers*. Paul Elek, London, 1975. p. 1

⁷ Starkey, David J. ‘The Origins and Regulation of Eighteenth Century British Privateering.’ In *Press Gangs and Privateers*. Tony Barrow (ed). The Bewick Press, Tyne and Wear, 1993. p. 40

⁸ Macintyre, p. 1. Note; Tony Barrow, (p. 41) referencing D.J. Starkey, puts the date as 1242.

⁹ Laird Clowes, *History of the Royal Navy*, Vol. II. In Macintyre, p. 1

seas were no longer safe, and lawful trade had been made impossible.¹⁰ Relations between France and England at the time were supposedly governed by the Twenty Eight Year Truce signed by Charles VI and Richard II in 1396 but it apparently did little to curtail the plundering attacks by English sea rovers on French commercial trade. King Henry was caught on the horns of a dilemma as he struggled to resolve how to punish the piratical offenders breaking the truce who were also vital to the legitimate private maritime defence of England should the truce dissolve.¹¹ A similar circumstance is repeated in the current environment, with problematic private military actors also being of vital importance to some states contingency deployments.

Incidentally, King Henry would not be the last leader to be embarrassed by their private military operatives and this signifies an ongoing issue for international law. His strained international relations originated in much the same way as occurred between the US and Iraq after serious incidents involving private military contractors, following the 2003 invasion – the contractors were essential to prosecuting the war and subsequent security operations but could not be adequately controlled or punished by any available legal instruments (discussed in Chapter 6), resulting in considerable Iraqi and international animosity.

An abridged example of Henry's licence issued in 1405 and translated from Latin is:

The King to all... we have granted... at their own charges, the aforesaid ships with as many mariners, men-at-arms and bow men as shall be necessary for their navigation and defence at sea against our enemies, and... we will that whatsoever they... succeed in winning, gaining and having by capture from our enemies aforesaid, may have and keep for their own proper use, without claim or hindrance from us, or our heirs and ministers, or the ministers of any of our heirs whatsoever.

¹⁰ *Royal and Historical Letters [during the Reign of Henry the Fourth, King of England and France and Lord of Ireland, Vol. 1: A.D. 1399-1404]*. Rolls Series, vol. xviii, (ed.) F.C. Hingeston (London 1860), p. 68. Note: the word *piracy* is not standing in for privateer here but is used by the source to illustrate the activities of 'unlicensed privateers'.

¹¹ Pistono, p. 322 + p. 324. Note: Pistono employs the terms *privateer* and *pirate* by discriminating between individuals and their activity respectively, with separation being temporary authorisation dictated by current political circumstances rather than a permanently enforced proscription; Andrews, Kenneth R. *Elizabethan Privateering*. Cambridge University Press, London, 1964. p. 5

Provided always that under colour of this licence they... neither do nor permit to be done any violence, hindrance or hurt to any who are in the friendship with us.¹²

This licence constitutes a more fulsome attempt at legally controlling the activities of private military and indicates a measure of political concern. The operational specifications of this latter example contrasts to the one of his predecessor in several ways. The former restricts action to reprisal against goods only the latter includes people and vessels, whom shall bear the endeavour's expense and there is no mention of any share to be enjoyed by the King - specific exclusions are extended to heirs and ministers, possibly to relieve previously held and future claims. The description of accompanying personnel under licence is expanded, and the avoidance of preying on the King's friends is made clear. It may be that as the privateering activity increased in importance and scope, it became necessary for the licence parameters to be more closely defined. Additionally, as the King stipulated no public interest in the fiscal rewards from these private ventures he would be unlikely to be held publicly accountable for the goods' return in contested cases, a method of plausible political deniability.¹³ This mechanism has also seen the use of modern private military attract a similar observation. The King's introduction of additional licence stipulations also indicates a desire to exercise greater control over the privateers and therefore the revenue and security goods they generated. This would extend the interest of the privateers to include the interests of their sponsoring state. It also recognises that there was a need to oversee private military endeavours in an increasingly vigilant manner, in order to maintain control in an international operating environment. This concern has re-emerged in modern times.

Relations with friendly countries were also jeopardised by unauthorised privateering of the period. Anglo-Flemish affairs suffered when attacks were carried out

¹² Marsden, R.G. *Law and Custom of the Sea*. Navy Records Society, 1894

¹³ Note; many a monarch (Elizabeth, for example), often held private investments in the ventures.

on Flemish shipping by English raiders in 1402 and 1403. The former resulted in the Count of Flanders, Philip the Bold, making threats to retaliate against English merchants who conducted business in Flemish lands. The latter instance saw Phillip carry out the threat by seizing £10,000 worth of English goods in April of that year. The impounded goods became a major impediment in continuing negotiations for compensation in the earlier attacks. Responsibility for the capture of the Flemish freighters was attributed to two Englishmen who had previously sailed in the legitimate service of Henry IV: William Prince from the Isle of Wright and Henry Pay of Poole. Apparently, Mr. Pay's incessant preying on Spanish trade also seriously damaged relations with the then friendly Iberian kingdoms.¹⁴

The often subjective division between piracy and privateering was given treatment under a proclamation made in 1426 to underscore the friendly relationship shared between Flanders and England.¹⁵ This emphasised that all goods seized be held under arrest until their capture could be legally certified by a competent authority. A vessel arriving into port with the captain and crew missing would result in the captor's arrest as the probability of them being the King's friends was high; enemies would have been held for ransom. Generally, a foreign merchant pirated by an English entity usually applied to the King of England for permission to sue for reparation in an English court. An English merchant similarly wronged would petition the relevant foreign prince.¹⁶ This emphasises the notion that developing control of the privateers was necessary to exhibit state authority and to some extent, project national competence.

English privateering was seen to expand on an as yet unprecedented scale in 1543 when Henry VIII declared war on France. During the summer of 1545 the French

¹⁴ Pistono, pp. 322-324. Of passing speculative interest are the 15th. century surnames of William Prince and a contemporary of his, Richard Spicer (Pistono, p. 326): they also appear prominently in recent controversial activities of private military contractors.

¹⁵ Barrow, p. 41

¹⁶ *Calendar of the Close Rolls, Henry VI. v. I, 1422-9*, p. 263. In Lewis, Edward. 'Responsibility for Piracy in the Middle Ages.' *Journal of Comparative Legislation and International Law*, Third Series, Vol. 19. No. 1 (1937), pp. 78-79.

fleet entered the Solent unopposed, displaying its command of the English channel. In the fracas Henry's naval pride, the *Mary Rose*, heeled over and sank in Portsmouth harbour giving weight to the claim that the King's ships were backward in the defence of English shores. The privateers proved exceptionally combative and pressed repeated vigorous attacks against the French merchant shipping with apparent impunity. Indeed, the resultant prize hauls were so numerous that even the religious buildings of every English port were pressed into service as storage facilities for the plunder. In London it was said that Grey Friars was full of wine, the Austin Friars reeking with fish, and the Black Friars black with prunes. An unforeseen consequence was that all the excess booty served to force local prices down, causing some embarrassment to the merchants.¹⁷

Another consequence of privateering was that vessels from the ports of Spain, the Netherlands, and Germany became neutral and began carrying French goods, the French insisting that they were protected by a flag of neutrality. The English privateers took quite another view and reckoned that the goods were lawful prizes regardless of the carrier's status. There were a resultant rash of lawsuits that again strained cross-Channel diplomatic relations.¹⁸ Quite apart from the political tensions that unrestricted privateering created, they were the most effective instrument of English naval power at a time when their state was ill-prepared to meet the maritime challenge by public means.

In May 1585 when English ships anchored in Spanish ports were appropriated, their crews arrested and the cargoes confiscated, there was an immediate outcry by the effected merchants in particular and the English population in general. The response two months later, by the Elizabethan government, was to instruct the Lord Admiral to

¹⁷Williams, Neville. *The Sea Dogs*. Weidenfeld and Nicolson, London, 1975. p. 22

¹⁸ *Ibid*, p. 22

issue letters of reprisal to those who could satisfactorily prove their losses.¹⁹ These letters permitted authorised claimants to recover their goods' value by raiding Spanish ships at sea. The validity of such letters was a term of six months. In this manner, the English government (while collecting revenue from the activity) was not committing itself to an overt act of war as the acts were judged to be reprisals for private wrongs. Accusations of undeclared wars being prosecuted by state's private military contractors, persist to the present.

The procedure for proof-of-loss soon became abused by the merchants, whose responsibility it was to say what or how much had been captured, resulting in a legal fiction. In return for 80% of the seized goods the local squirearchy furnished harbours, markets, and immunity from indictment as the justice apparatus mostly resided with them, further fouling the legitimate procedure.²⁰ Reprisal ventures thereby became a matter of buying a licence through the Lord Admiral's court, crewing, arming, and provisioning (victualling) a vessel, then setting out. In short order, licence procurement was further rorted by those merchants, nobles, and adventurers who could obtain a note from the Lord Admiral direct and in some cases bypass the procedure altogether, confident of deflecting any objectors at a later date through Court influence.²¹ What is illuminated here is the need for comprehensive control to be exerted all along the events chain, not only upon the privateering activity itself but also the market end - something that remains unresolved in the international arena today and is presented in recent US Government Accountability Offices reports on their own private military contractors.²²

From as far back as the fourteenth century, and most likely well before, the English Crown had consistently encountered difficulty applying common law against

¹⁹ The Lord Admiral and the High Court of the Admiralty also came to have a financial interest (set at 10%), in plundered goods. In Andrews, pp. 22-23.

²⁰ Nutting, P. Bradley. 'The Madagascar Connection: Parliament and Piracy, 1690-1701.' *The American Journal of Legal History*, Vol. 22, No. 3 (July 1978), p. 203. C.f. David Mathew. 'The Cornish and Welsh Pirates in the Reign of Elizabeth.' *English Historical Review*, 39 (1924), pp. 337-348.

²¹ Andrews, p. 5

²² See Chapter 6.

privateers accused of piracy because concentrated local pressure incapacitated the jury system. A constant tension developed between the Admiralty courts, who were given authority to use civil law to try piracy cases by Edward III in 1361, and common law judges who wished to limit the rival jurisdiction to matters of things rather than persons. Neither having been able to effectively control privateers or deter piracy, saw a Parliamentary statute transfer the adjudicating authority back to the common law in 1536.²³ While the trial by jury statute may have improved the prosecution procedure of the indicted persons, as the following centuries indicate, no law can be more effective than the men charged with its enforcement.²⁴ This is pressed further in Chapter 6, as it relates to the ineffectual taxonomy existing in modern international law relating to ‘mercenaries’ and supposedly by extension, private military companies.

The unfolding events exacerbated already deteriorating Anglo-Spanish relations and led to a war-like state between the two countries, in actuality if not legally. The success of Sir Francis Drake’s expeditions from 1585, to the West Indies, ‘inflamed the whole country with a desire to adventure unto the seas, in hope of the like good success, [so] that a great number prepared ships, mariners and soldiers and travelled every place where profit might be had.’²⁵ Between the years 1589-1591 alone, more than 200 armed private vessels made voyages of reprisal.²⁶ It has been noted that the Elizabethans were ‘almost totally dependent upon the private initiative and individual enterprise of its privateering establishment.’²⁷ In the English war with Spain, privateering was the characteristic form of maritime warfare.²⁸ Clearly, the vigorous deployment of private maritime force was of significant importance to the Elizabethan economy. By this

²³ 28 *Henry VIII, c. 15*. In Nutting, p. 203

²⁴ Marsden, I. *The Law and Custom of the Sea* viii-xxx, 88 (1916); R.G. Marsden ‘Vice Admirals of the Coast.’ 22 *English Historical Review* (1907), pp. 468-477. In Nutting, p. 203

²⁵ Harte, W.J. *Gleanings from the Commonplace Book of John Hooker*, p. 39. In Andrews, p. 4

²⁶ Andrews, pp. 3-4.

²⁷ Garitee, Jerome R. *The Republic’s Private Navy: The American Privateering Business as Practiced by Baltimore During the War of 1812*. Wesleyan University Press, Connecticut, 1977, p. 5. In Sechrest, p. 7 Queen Elizabeth’s annual revenue at this time was not more than £300,000. *C.f.* Macintyre, p. 3

²⁸ Andrews, p. 6

mechanism, fiscally motivated armed merchants and privateers became actively complicit in the preparation for, and instrumental in the successful military conduct of, the English sea war to counter the imperial expansions of Spain.²⁹

Unlike their predecessors, the *condottieri* of the early Renaissance, privateers in the Elizabethan age were able to produce significant public security and defence goods without completely degenerating the principal/agent relationship. It is suggested that this was because privateers retained a significant interest in perpetuating the public goods they were supplying: a stable and well defended state, which in turn provided the domain that enabled their own private goods to flourish. Of course, there were ongoing difficulties. It was the case that as the pirate could become a privateer, so could the privateer find his activity suddenly illegitimate when state authorisation was withdrawn or expired.³⁰ As found in the Ancient Greek and *condottieri* experiences, unemployed private military actors also presented significant security dilemmas.

As merchants embraced a significant degree of financial risk to develop their privateering assets and the rewards were considerable it is of little surprise that, in the sudden event of such a trifling matter as the timeliness of legal paperwork, piracy (having already been present for some considerable time) became a natural career trajectory. It might be observed that as the state was responsible for the proliferation of privateering to serve its own public ends, there must also be attendant responsibility shouldered by the state for the descent of some of the same private elements into piracy. This particularly in light of a current inability to effect complete control of private military in international operations.

²⁹ Anderson, Gary M., and Gifford Jr., Adam. 'Privateering and the Private Production of Naval Power.' *Cato Journal*, Vol. 11, No. 1 (Spring/Summer 1991), p. 101; Bower, Graham. 'The Nation in Arms: Combatants and Non-Combatants.' *Transactions of the Grotius Society*, Vol. 4 (1918), p. 78; Fuchs, Barbara. 'Faithless Empires: Pirates, Renegades, and the English Nation.' *ELH*, Vol. 67, No. 1 (Spring 2000), p. 45

³⁰ Fuchs, p. 46

The lion's share of maritime violence in the West Indies during European hostilities with Spain in the sixteenth and seventeenth centuries did not meet their legal theory criteria for a piracy charge. Generally, the robbers were enemies of Spain and the majority did sail under letters of marque or reprisal.³¹ However, privateers' commissions were now freely issued by belligerent powers to almost any vessel owner that made application for one and a large proportion of these had no interest in the outcome of the war. As explained previously, during peacetime the letters were ostensibly an instrument of private redress, whereby an injured subject could obtain compensation through licensed reprisal against the goods and subjects of a foreign state. In the West Indies, as elsewhere prior, determining the exact parameters of goods-loss was often fraudulently pursued resulting in diminished justice obtainable between the subjects of one state and another. This encouraged the English, French, Portuguese (for a brief period), and the Dutch to abandon legal propriety and generously peddle letters of marque to one another as part of their respective efforts against Spain.³² Thus, privateering became a profession separated from the religion, commerce, or the politics of those who participated in it while they still referenced these as prime motivations.³³ The present use of private defence contractors might well be following a similar course.

An individual case in point here is the chequered career of the Scotsman William Kidd (*ca.* 1645-1701), who began as a privateering rover and pirate hunter but eventually found the lure of piracy irresistible. He was, in 1689, an officer serving aboard a merchant vessel the Leeward Islands. When the War of the League of Augsburg (1690-1697) began in Europe, Kidd obtained a privateering commission and began to seek targets in the Indian ocean.³⁴ Competence lacking and his privateering

³¹ Barbour, Violet. 'Privateers and Pirates of the West Indies.' *The American Historical Review*, Vol. 16, No. 3 (April 1911), p. 530

³² Seavoy, Ronald E. *Origins and Growth of the Global Economy*. Praeger, London, 2003. p. 28

³³ Barbour, p. 530

³⁴ Marley, David F. *Pirates and Privateers of the Americas*. ABC-CLIO Inc, Santa Barbara, 1994. pp. 207-210.

efforts (which required a good degree of business acumen) proving to be inadequate and unrewarding, Kidd began enthusiastically operating outside the terms of his legal commission.³⁵ This earned him the label of ‘pirate’ from the East India Company which instituted an extensive manhunt, the logistics of running naval vessels in the West Indies being of great administrative difficulty for the English government.³⁶ Kidd precipitated an international crisis (*ca.* 1697) between the East India Company, England and Europe generally, and the Indian Mogul empire of Aurangzeb by seizing the *Quedah Merchant*, a vessel of particular value to them. Following this, the Mogul proclaimed an embargo on all European trade.³⁷ In an act of desperation that underlines the adversity England (and it might be presumed, others) faced in exerting a monopoly maritime control, the Crown responded by offering pirates a general amnesty in return for future compliance. The grace specifically excluded William Kidd. He was eventually arrested and executed in England in 1701.³⁸

This vignette further illustrates the difficulty even relatively sophisticated states had in administering their decentralised corporate and proprietary colonial affairs without a proxy control-of-force afforded them by armed merchants and privateers. It is telling to note that when opportunities for legitimate privateering again proliferated with the commencement of Queen Anne’s War (1702-1713) against the Spanish, the incidence of illegitimate maritime violence declined.³⁹ Again, reference to the modern Somali piracy situation bears striking similarities: unable to operate legitimate maritime

³⁵ Risso, p. 308

³⁶ Pares, R. ‘The Manning of the Navy in the West Indies, 1702-63.’ *Transactions of the Royal Historical Society*, Fourth Series, Vol. 20 (1937), p. 31; Nutting, pp. 208-209.

³⁷ To give an idea of the potential values involved in Indian prizes, the Mogul’s magnificent Peacock Throne was valued at £6 million pounds, more than nine times King William of England’s personal income. *C.f.* Marx, Jenifer. *Pirates and Privateers of the Caribbean*. Krieger Publishing Company, Florida, 1992. p.191

³⁸ *Calendar of State Papers, Domestic, 1698*. 418. James Vernon, Secretary of State for the Southern Department to James Blackbourne, Secretary of the East India Company, 21 November, 1698. In Nutting, p. 209

³⁹ Nutting, p. 215

business has led to piracy that sophisticated state navies are wrestling to control, as is the international judiciary process.

Evading important historical issues at stake in the eighteenth century War of the Spanish Succession for the English and Dutch (and no doubt, the French), the importance of trade could not be overstated. In defence of this vital economic interest, naval power proved to be inferior to the physical influence exerted on enemy commerce by privately owned ships authorised by the belligerent's governments.⁴⁰ In the early stages of hostilities, the French concentrated their maritime efforts in privateering rather than in her navy. The result for their corsair centre at Dunkirk alone was an accumulation of goods and prizes worth over £6 million sterling. This was achieved through the actions of more than 100 French privateering vessels which between the years of 1703 and 1708 accounted for the attrition of over 1,100 Dutch and British ships, in exchange for the capture of 175 of their own privateers. The British privateers gave a good account of themselves and were able to administer respectable injuries in return, although the actual figures remain buried in public records. Of note is that English Parliamentary discussion in the Commons centred around the continued abuses of the privateering fiscal mechanisms and the fact that captured salt was entering port at less than the usual duty rate.⁴¹ This is an indication that although the use of privateers had a beneficial impact on the projection and success of maritime power, there were subsequent fiscal problems associated with goods and prizes undermining the slow reacting economic and legal mechanisms of the English state. These and other complaints about terms of contract contributed to the passing of the Cruisers and Convoys Act of 1708, and later complaints from neutrals about the excesses of British

⁴⁰ Clark, G.N. 'War Trade and Trade War.' *The Economic History Review*, Vol. 1, No. 2 (January 1928), pp. 262-263.

⁴¹ Clark, p. 264. Clark directs the inquisitive to the *Calendar of State Papers, Domestic*, 1703-4, pp. 496-497, for numbers and strength of British privateers.

privateers led to the Privateers' Act of 1759.⁴² Recent US government attempts to address similar problems with their contractors in Iraq and elsewhere shows this is a persistent problem with privatised military.

As cross-Atlantic colonial interests were developed by the British toward the middle of the eighteenth century, private men-of-war and armed merchantmen continued to play an important role in imperial institutions, economic growth, and military and naval strength. Privateering was a widespread activity when considering the ports and the number of private armed vessels or merchants and seamen that embarked on voyages in search of prizes from the Grand Banks to the Caribbean. These privateering operations played *the* leading role in the prosecution of America's war effort and made a significant contribution to the extension of British sea power by interrupting French and Spanish commerce.⁴³

Table 3 (p. 79), and Table 4 (p. 80), provide an idea of the value, extent and tempo of such voyages. The data indicates a high level of organisation and considerable economic resources and experience in support of the privateering business. Prizes captured had to be condemned in a Vice-Admiralty court and the vessel and cargo sold to advantage before any profit was realised. Unsurprisingly, the shareholders in privateering ventures of the time included many leading East Coast businessmen.⁴⁴

This would suggest that the activity was a normal and accepted part of conducting business and was effectively controlled by local, public laws.

⁴² Starkey, Richard J. 'The Origins and Regulation of Eighteenth-Century British Privateering.' *Pressgangs and Privateers*. Tony Barrow (ed). The Bewick Press, Tyne and Wear, 1993. p. 44

⁴³ Swanson, Carl E. 'American Privateering and Imperial Warfare, 1739-1748.' *The William and Mary Quarterly*, Third Series, Vol. 42, No. 3 (July 1985), p. 358-359.

⁴⁴ John Bannister, Godfrey Malbone, and John Brown of Newport; Thomas Hancock of Boston; the Livingstons, Beekmans, and Van Hornes of New York, among many others. In Swanson, p. 365

Table 3: Yearly Privateers and Privateering Berths, British Colonial Ports, 1739-1748

<i>Port</i>	<i>Yearly Privateers</i>		<i>Privateering Berths^a</i>	
	<i>N</i>	<i>%</i>	<i>N</i>	<i>%</i>
Boston	29	6.2	2,591	7.1
Newport	117	25.1	9,309	25.6
New York	105	22.6	10,328	28.4
Philadelphia	47	10.1	4,646	12.8
Charles Town	36	7.7	2,553	7.0
West Indies ^b	112	24.0	5,372 ^d	14.7
Other ^c	20	4.3	1,605	4.4
<i>Totals</i>	<i>466</i>	<i>100</i>	<i>36,404</i>	<i>100</i>

^a Several procedures were employed to estimate privateering berths. For cases listing size and crew there was no need to estimate. When data on crew size were missing, estimates were based on size of vessel – ship, snow, brig, etc – using the mean crew size for all British colonial privateers of that type. When data was missing for crew size and vessel type, no estimate was made.

^b Includes Bermuda.

^c Cape Fear, N.C.; Norfolk, Va.; Frederica, Ga.; Portsmouth, N.H.; and New Jersey.

^d This estimate suffers rather dramatically from missing data.⁴⁵

Table 4 indicates that large ports were capable of not only providing the necessary economic and legal framework, entrepreneurial skill, and shipwright facilities but also the immense manpower required to crew the craft; crews of fifty to seventy were typical even on schooners and sloops. When hostilities broke out in 1739 (and with France in 1740), the communities with large merchant fleets were able to readily dispatch armed and crewed vessels.⁴⁶ Privateering at this time not only provided a strategic military facility but also exerted a valuable economic influence on the home-state while simultaneously weakening the adversary's; a positive example of private maritime violence pursuing several public state ends. They facilitated colonial economic development, provided maritime security, and expanded political influence.

⁴⁵ Swanson, Table II, p. 362

⁴⁶ Swanson, p. 365; and Starkey, pp. 42-43.

Table 4: Types and Value (£ Sterling) of Yearly Privateers, 1739-1748

<i>Port</i>	<i>Schooners</i>	<i>Sloops</i>	<i>Brigs</i>	<i>Snows</i>	<i>Ships</i>	<i>Other^a</i>	<i>Missing</i>	<i>Value (£)</i>
Boston	1 (233)	9 (2,646)	12 (8,668)	3 (2,394)	0	0	4	13,941
Newport	4 (932)	68 (22,896)	14 (10,616)	12 (10,153)	8 (13,597)	0	11	58,194
New York City	0	39 (14,579)	43 (34,605)	7 (6,961)	13 (20,197)	1	2	76,342
Philadelphia	9 (2,377)	6 (1,765)	6 (4,942)	9 (9,898)	12 (18,850)	1	4	37,832
Charles Town	8 (2,837)	9 (3,045)	4 (3,388)	3 (1,982)	5 (7,516)	5	2	18,775
West Indies ^b	10 (3,071)	31 (11,324)	13 (9,248)	6 (5,967)	1 (2,519)	6	45	32,129
Other ^c	3 (735)	7 (2,639)	4 (3,051)	3 (2,345)	1 (1,261)	0	2	10,031
<i>Totals</i>	35 (10,185)	169 (58,894)	96 (74,518)	43 (39,700)	40 (63,940)	13	70	247,237

Note: Estimated values are based on the Philadelphia construction costs from 1735-1754 presented by John J. McCusker.⁴⁷ The estimates consider the difference between measured tons and tone burden and also assume that private men-of-war were vessels converted to privateers, not new-built craft.

^a Includes galleys, boats and petty augers. Lack of data precludes calculation of values.

^b Includes Bermuda.

^c Cape Fear, N.C.; Norfolk, Va.; Frederica, Ga.; Portsmouth, N.H.; and New Jersey.⁴⁸

The available sources do not comment specifically on economic or legal difficulties from the colonial-American side of operations at the time but there is subsequent retrospective discussion.⁴⁹ Given this lacuna, it is possible that there was not the same degree of difficulty that the English experienced with controlling their privateering ventures. This might be attributed to a more pragmatic ‘frontier’ approach by the Americans. What is mentioned is the profitability: ‘In case of a French Warr [sic] I don’t think theres [sic] any business near so profitable as a proper Vessel or two well

⁴⁷ ‘Sources of Investment Capital in the Philadelphia Shipping Industry.’ *Journal of Economic History*, XXXII (1972), pp. 146-157.

⁴⁸ Swanson, Table IV, p. 364

⁴⁹ There is a variety of subsequent commentary and analysis, for example: C. Kevin Marshall. ‘Putting Privateers in Their Place: The Applicability of the Marque and Reprisal Clause to Undeclared Wars.’ *The University of Chicago Law Review*, Vol. 64, No. 3 (Summer 1997), pp. 953-981; William R. Casto. ‘The Origins of Federal Admiralty Jurisdiction in an Age of Privateers, Smugglers, and Pirates.’ *The American Journal of Legal History*, Vol. 37, No. 2 (April 1993), pp. 117-157; ‘International Law. Status of Armed Merchant Vessels.’ *Yale Law Journal*, Vol. 33, No. 4 (February 1924), pp. 439-440; James Brown Scott. ‘Foreign Enlistments in the United States.’ *The American Journal Of International Law*, Vol. 12, No. 1 (January 1918), pp. 172-174, and ‘Armed Merchant Ships.’ *The American Journal Of International Law*, Vol. 10, No. 1 (January 1916), pp. 113-116.

fitted out a [sic] Privateering.’⁵⁰ The following example from several decades further on shows the increasing fiscal impact; the booty wrested from the West Indian trade by American based privateers in six months for the year 1778 alone, was some 700 vessels worth nearly £2 million.⁵¹ To put this in perspective, the Louisiana Purchase of 1803 amounted to some \$15 million.⁵² A good indication of the economic influence American privateers exerted on Britain’s enemies is that the 829 prizes captured between 1739 and 1748 were worth about £7,561,000 sterling.⁵³ This amount represented approximately 30% of the total trade exports (exports plus imports) of France and its American colonies for the mentioned period.⁵⁴ Unlike the British experience earlier that suggested a struggle to adjust control mechanisms to facilitate the rapid changes in market goods’ flow, the Americans were seemingly able to absorb or manage the fluctuations more adroitly.⁵⁵ This suggests a reasonably sophisticated regulatory mechanism that was well subscribed to, something modern regulators might well learn from.

Controlled privateering also fulfilled a crucial role in the American Revolution. Limited state-funded maritime capacity meant some 700 private ships were privately commissioned, as opposed to the meagre American naval contribution of approximately 100 vessels.⁵⁶ Wide public participation saw even General George Washington holding shares in privateering ventures.⁵⁷ Another prominent personage from the period who did

⁵⁰ John Bannister to Samuel Clark, October 6, 1740, John Bannister Copy Book, 1730-1742, p. 117, Newport Historical Society, Newport, Rhode Island. In Swanson, p. 366

⁵¹ Lucie-Smith, Edward. *Outcasts of the Sea*. Paddington Press Ltd, London, 1978. p. 226

⁵² At; http://www.archives.gov/exhibits/american_originals_iv/sections/louisiana_purchase_treaty.html. Accessed 01/01/09

⁵³ Swanson, p. 377. From a sample of 153 prizes. Swanson emphasises that these figures should be considered conservative.

⁵⁴ Doerflinger, Thomas M. ‘Antilles Trade of the Old Regime: A Statistical Overview.’ *Journal of Interdisciplinary History*, VI (1976), p. 400. In Swanson, p. 377

⁵⁵ The U.S. Constitution gives power to ‘grant letters of marque and reprisal’ in Article 1, section 8.

⁵⁶ Stivers, R.E. *Privateers and Volunteers: The men and Women of Our Reserve Naval Forces, 1766-1866*. Naval Institute Press, Annapolis, Md., 1975. In Tabarrok, Alexander. ‘The Rise, Fall, and Rise Again of Privateers.’ *The Independent Review*, Vol. XI, No. 4 (Spring 2007), p. 567

⁵⁷ Garitee, J.R. *The Republic’s Private Navy*. Wesleyan University Press, Connecticut, 1977. In Tabarrok, p. 567

not hold shares in the ventures but nevertheless saw benefit in privateering was Benjamin Franklin. In the absence of significant American military prisoner captures, Franklin used the captured privateer sailors in prisoner exchanges to free American soldiers held in British prisons.⁵⁸ On June 18, 1812 the American Congress finally formalised their privateering intentions.⁵⁹

Pursuant to this, American privateers were able to send forth a fleet of cruisers from the coast less than thirty days after the declaration of war. In contrast, the American Navy had only eight seaworthy ships.⁶⁰ Congress also gave further clarity to the privateers' regulation by detailing the legal process to be followed. This framed what constituted prize-ownership (reliant on the captured ships papers including manifest, registers, cargo, and clearances), under what circumstances such capture was lawful, and the process for redressing unlawful capture, subsequent restitution, and the liability of persons and chattels.⁶¹ It is testimony to the efficacy of these Acts and the adherence of the American courts to their spirit, that there were cases of unlawful capture brought that resulted in the return of British vessels and goods (something that modern US courts have been unable to do for Iraqi civilian claimants). At the close of hostilities, American privateers were responsible for the capture or sinking of some 2,500 British ships and inflicting roughly \$40 million (approximately \$525 million in today's dollars) worth of damage to the British economy. The American Navy was almost completely ineffectual, being either captured or blockaded in port. The pressure brought to bear by effected British ship owners, colonial merchants, and insurance companies was instrumental in their government's termination of the war.⁶² The

⁵⁸ Tabarrok, p. 567

⁵⁹ An Act Declaring War Between the United Kingdom of Great Britain and the Dependencies Thereof, and the United States of America and Their Territories, *Annals of Congress*, 12th. Cong., 1st. sess., pp. 2322-2323. At: <http://memory.loc.gov/ammen/amlaw/lwac.html>. In Tabarrok, p. 567

⁶⁰ Chidsey, D.B. *The American Privateers*. Dodd Mead, New York, 1962. In Tabarrok, p. 567

⁶¹ An Act Concerning Letters of Marque, Prizes, and Prize Goods, pp. 2327-2328. In Tabarrok, p. 568

⁶² Tabarrok, p. 568

privateer's efforts were summarised: 'Private armed vessels were the only successful American offensive weapon after 1813 engaged in the War of 1812.'⁶³

That private maritime fighters were successful is undeniable, however, there also seems to be increasingly vigilant and effective oversight on the activity by government – an element missing in today's private military utilisation. An interested, motivated and controlled private sector was instrumental in providing a successful weapon for maritime warfare that hinged upon an economic, rather than a strictly nationalistic incentive. It must be considered though, that a nationalistic motive was also very important to the American privateers. Control of the private participants was, as far as possible, state-regulated to generate revenue and stimulate economic growth. The less control exercised, the greater the returns became but this was not without political danger. By the eighteenth century, privateers having the interest of and an interest in their home-state, were a potent economic driver and a valuable and strategic maritime force. However, the control of them largely relied on terra-firma not maritime, enforcement mechanisms; the latter being dominated by the privateers themselves and the former being influenced by self-interested officials and the desire for state-revenue; a situation not all that dissimilar to the *condottieri* period. The success privateers enjoyed ultimately proved to be potentially too great a menace to emergent and wealthy nation-states. As control of their activities steadily increased alongside the maturation of national navies, state law and economic mechanisms, so did the realisation that the deployment of this effective weapon could cut both ways, potentially endangering the home-state if the principal/agent relationship was disrupted. The practice was therefore deemed inconsistent with developing notions of private property, convivial inter-state

⁶³ Garitee, p. 244

relations, and international law. This resulted in a prohibition by a coalition of seven European powers in the Declaration of Paris of 1856.⁶⁴

The contribution made by privateering elements was significant, particularly in augmenting state maritime power during periods of economic infancy or naval immaturity. Under circumstances of minimal oversight, early privateers were a boon to fledgling economies and maritime power-projection but also constituted a blight upon international maritime security. Later, when more sophisticated regulatory mechanisms prevailed, they were able to present an immediate and credible naval threat, generate state income, and drain an adversary's economic life-blood and morale while generally projecting state authority and prestige. While nationalism was doubtless an influential factor, it is accepted that a singularly fiscal motivation may have encouraged the privateers, generally, to not endanger the state that sponsored them. However, it was the increasing regulatory control and direction that was a key determinant in the overall success of privateers' production of economic rewards, and public security and defence goods. Modern private military contractors operate in an international setting in a fashion analogous to the early privateers, so would seem prudent to approach their regulation in an accelerated and similarly pragmatic fashion. This being accomplished, private maritime or terrestrially deployed armed force could be of considerable assistance in an increasingly complex international security arena.

⁶⁴ Sechrest, pp. 28-30. One state that consistently resisted a regulatory change, was the U.S. See, Hirst, F.W. 'What The Americans Mean by Freedom of the Seas.' *Transactions of the Grotius Society*, Vol. 4, Problems of the War, Papers Read before the Society in the Year 1918 (1918), pp. 26-34.

Chapter 5

Case study 4: **West Africa ca. 1960-1999**

'Executive Outcomes is the small wave of the future in terms of defence and security, because the international community has abdicated that role.'

Eeben Barlow.¹

This case study examines the use of private military force by two African weak states in the twentieth-century era of colonialist departures and independence challenges, and illustrates the importance of attention to contract objectives and parameters, and contractors recognising the necessity of civilian participation in states' security outcomes. A generous amount of political detail is included to give context to the private military deployments. This augments the paucity of source material that exists on actual military actions of the mercenaries (and their successors) or independent accounts of them. The African political complexities also illustrate some of the modern international security difficulties faced by contingency operations or interventions in delicate intra-state situations. The narrative presents a good case for the modernisation of anti-mercenary laws and the introduction of international regulatory controls that recognise the significant role that responsible private military actors can play in challenging contingency operations. The complexity, extent, and pervasiveness of African security problems and the space available here has limited this chapter to two nations: the Congo very briefly, then somewhat more extensively, Sierra Leone. These were chosen to emphasise the difference between mercenaries, in the strict sense of the term, acting indiscriminately on behalf of competing belligerent political actors and a single, professional private military company acting responsibly for a recognised civilian government.²

¹ Executive Director of now defunct private military firm, Executive Outcomes, ca. 1997. In Harding, Jeremy. 'The Mercenary Business: Executive Outcomes.' *Review of African Political Economy*, No. 71 (1997), p. 87

² 'Recognised civilian government' being the post Treaty of Westphalia (1648) international environment and the formation of Weberian-type nation states that recognise security as a, if not *the*, primary public good and subscribe to the idea of a state monopoly on legitimate political violence. *C.f.*, Max Weber. *The*

If a state authority could not shoulder the burden of controlling or extending its monopoly on violence - often because of (among other causes) weak military agency or degraded political institutions, poor economic goods production and distribution, and international lassitude or fifth column intrusion – private force was frequently employed in post-colonial sub-Saharan Africa. This was not without hazards. The key to a successful government and private military limited partnership would tentatively appear to have hinged on clear contractual parameters, a high degree of contractor professionalism, and objectives that recognised civilian participation in state processes. Additionally, a steady oversight by a responsible and competent authority over the employed, and restraining mechanisms enforceable upon internationally accountable employers in the event of contractor misbehaviour, was necessary.³

The application of private military force has previously been shown to often accompany political, economic, or military change or upheaval.⁴ The period following independence from colonial rule commencing in the late 1950's and continuing into the 1960's, and the subsequent removal of overt extra-state sponsorship (and therefore, control) on the African continent, exemplifies this observation. Sudden independence from colonial control heralded an era of intra-state instabilities, civil wars, ethnic rivalries, lawlessness, military and civil corruption, rapine economic activity, and post-colonial meddling.⁵ Efforts at re-establishing security by fledgling governments or strongmen and by out-of-state concerns, whose economic activities or political ideologies were jeopardised, led to either individuals or small groups of mercenaries

Theory of Social and Economic Transformation and the State. (trans) A.M Henderson, and Talcott Parsons. Free Press, New York, 1964. p. 154

³ This issue of control is a recognised future security problem: Dokubo, Charles. 'An Army for Rent, Private Military Corporations and the Civil Conflicts in Africa: The Case of Sierra Leone.' *Civil Wars*, Vol. 3, No. 2 (Summer 2000), p. 51; Howe, Herbert M. *Ambiguous Order*. Lynne Rienner Publishers, London, 2001., contends that mercenaries often reflect a problem even more than they may contribute to it (p. 188).

⁴ Reference the previous case studies presented in this work. And Small, Michelle. 'Privatisation of Security and Military Functions and the Demise of the Modern Nation-State in Africa.' African Centre for the Constructive Resolution of Disputes (ACCORD), Occasional Paper Series: Vol. 1, No. 2 (2006). p. 7

⁵ Small, p. 12

becoming key private actors pressing agendas on behalf of various parties keen to deflect or maximise strategic influence.⁶ This period was characterised by an almost complete lack of control by the mercenaries themselves, their employers over them, or by enforceable international regulatory mechanisms. All three elements continue to be problematic, to varying degrees, with private military companies in the twenty-first century.

Leading up to the 1960 independence of the Belgian Congo, the Belgians had done little to prepare the country for their sudden departure or familiarise the population with a sustaining ideology or appropriate political institutions. Local and regional government was inexperienced in such a transition, there were few university graduates, and no competent and charismatic leader was promoted. Upon independence, in a direct replication of the Belgian constitutional model, a Prime Minister, and President and Head of State were imposed.⁷ The commander-in-chief of the Belgian armed forces, Lieutenant General Émile Janssens, then abruptly informed his soldiers that independence would have no effect on the military.⁸

This resulted in an immediate mutiny by the colonial military force. The *Force Publique* was until then a well turned out, disciplined formation of some 30,000 troops led by Belgian officers. Repudiating the comments of their commander, the troops remained loyal to their newly formed central government and were renamed the *Armée Nationale Congolaise* (ANC). The Belgian response was to send their forces back in to disarm the new Congolese troops and reoccupy part of the country, thus removing any

⁶ Ballo, Zié. 'Privatization of Security, Violence against Civilians and the Duration of Civil Conflicts: The Case of Mercenaries in Africa.' ARQUADE, University of Toulouse I and IEP of Toulouse. At, http://www-gremaq.univ-tlse1.fr/job_market/ballo_jmp.pdf. p. 2. Accessed 22/10/10.

⁷ Independence was achieved on 30/06/60. Additionally, the word 'independence' was not introduced into the local political lexicon until 1956. C.f. Schatzberg, Michael G. 'Military Intervention and the Myth of Collective Security: The Case of Zaire.' *The Journal of Modern African Studies*, Vol. 27, No. 2 (June 1989). p. 319

⁸ Schatzberg, p. 319; Howe, quotes the General: 'before independence equals after independence'. (pp. 38-39).

legitimate government monopoly on violence in the region.⁹ Splinter factions then jostled for eminence and this fermented a coup d'état when there was an irrevocable divergence of policy views between the newly appointed Prime Minister and President; both attempted to declare the others' authority void. The former democratic coalition-government leader Patrice Lumumba, was assassinated in January 1961. One source claims this was the work of Belgian mercenaries.¹⁰ Another asserts that it was achieved with the collusion of the newly arrived CIA station chief at Leopoldville, Lawrence Devlin.¹¹ It may be significant that Lumumba's rival Tshombe, was favoured by the Americans who were actively promoting their own interests. That it would be possible for mercenaries to carry out this type of operation with impunity is indicative of the distance from international authority they were.

Some disaffected elements of the ANC broke away and made up a small force of *gendarmes* (a type of civil/military police) under the command of a former sergeant-major, now promoted to colonel, called Norbert Muké. Under the banner of local political leader Moise Tshombe and with assistance from the Belgians, they proclaimed the secession of the mineral-rich independent state of Katanga with Muké now the Commander-in-Chief of the Katangese gendarmes and Tshombe as President.¹² With control of the vast mineral wealth of Katanga and Belgian civilian lives around the Congo in jeopardy, UN peacekeeping troops were called in to ostensibly replace the Belgian forces but reportedly acted with some lassitude.¹³ It has been asserted that this was to disguise a mission to terminate Tshombe's breakaway-state aspirations and was

⁹ This likely signals the starting point for the civil, military, and political disintegration of the Congo.

¹⁰ Schatzberg, pp. 319-320. Mockler examines the idea that the murder was the work of rather unsavoury Belgian mercenaries, known for such activity. Mockler, Anthony. *The New Mercenaries*. Sidgwick & Jackson, London, 1985. pp. 43-44.

¹¹ Weissman, Stephen R. 'CIA Covert Action in Zaire and Angola: Patterns and Consequences.' *Political Science Quarterly*, Vol. 94, No. 2 (Summer 1979), p. 265

¹² Mockler, p. 40

¹³ Weissman, p. 265

done so with the blessing of both the Americans and the Russians – unusually united in this.¹⁴

With his own internal political rivals, Tshombe faced domestic competition from tribal Baluba youths who dominated north Katanga. Armed with sharpened bicycle chains, they came to present a significant terror-gang element and the developing war with them was characterised by savagery and bitterness.¹⁵ Having no unified state authority and monopoly on violence or a single ideological goal assisted in perpetuating the disrupted conditions in the Congo. It was into this anarchic quagmire of mismanaged decolonisation, competing ideologies, and orchestrated civil and ethnic unrest that mercenaries were introduced to further press various interests.¹⁶

The type of mercenary that was to originally manifest in the first Congo conflict proved to be the last of their type and exemplify why mercenaries operating uncontrollably attract so much ire. They were somewhat reminiscent of early, infamous *condottieri* introduced in Chapter 3: they were operating with the tacit approval of external states and were primarily interested in adventure and personal aggrandisement, control of them was limited to cash payments and control by them was limited only by whatever professionalism, personality and integrity they possessed or lacked. The combative political and economic agendas of large international players and states were given life by the colourful mercenary leaders they employed: Bob Denard for the French, Jean Schramme for the Belgians, and Mike Hoare for the British.¹⁷ They formed small bands to discourage (and assassinate) nationalists, to topple regimes unfriendly to their employers or an aligned foreign power, and to support internal factions in the

¹⁴ This is contrary to Schatzberg (see, p. 320) who favours the idea that it was probably to curb the expansionism of the U.S.S.R. Gleijeses, Piero. “Flee! The White Giants Are Coming!”: The United States, the Mercenaries, and the Congo, 1964-65.’ *Diplomatic History*, Vol. 18, Issue 2 (Spring 1994), p. 210, concurs with Mockler on the UN mission goal.

¹⁵ Mockler, pp. 41-42.

¹⁶ French, Howard. ‘The Mercenary Position.’ *Transition*. No. 73 (1997), pp. 112-113.; Carafano, James Jay. *Private Sector Public Wars*. Praeger Security International, London, 2008. p. 59-60; Gleijeses, p. 208

¹⁷ No available sources could be scrutinised for the activities of Russian-backed Cuban mercenaries.

struggle to dominate geography usually referenced by valuable resource concentrations. Generally, the mercenaries were white ex-servicemen of the colonial powers.¹⁸ Very little credible record of the professional background or nationalities of these operators is evident, doubtless in accordance with their covert and subsequently politically embarrassing, employment. What is indicated is that they were mainly Belgian, French and Rhodesian, with some American and British elements intermingled.¹⁹

This point marks the place where the international community turned its face away from the African troubles and seemed happy to allow toxic African events to unfold unassisted. As the Cold War powers competed externally on the international stage, so the mercenaries did internally in West Africa. It can be observed that the superpowers' inability to resolve their ideological differences physically manifested itself in a brutal, proxy belligerence that, by covert use of mercenaries, was able to proceed with indifference to International Humanitarian Law, or any domestic law or normative ethic. If current international powers became belligerent and continued the widespread use of unaccountable private military actors, similar results would be likely.

By 1964, the mercenaries' activities were described by U.S. ambassador Godley as 'an uncontrolled bunch of toughs who consider looting and safecracking fully within their prerogatives.'²⁰ A CIA report noted, 'serious excesses included robbery, rape, murder and beatings.'²¹ It was the dual policy of America at the time to openly provide military aid to Tshombe while it covertly financed, armed, and oversaw the mercenaries.²² The mercenaries' management was framed by parameters that were

¹⁸ Musah, Abdel-Fatua. 'Privatization of Security, Arms Proliferation and the Process of State Collapse in Africa.' *Development and Change*, Vol. 33, No. 5 (2002), p. 911

¹⁹ Ballo, Table 1, pp. 46-52.

²⁰ In cable from Godley to Secretary of State, 13 December 1964, NSFCF [National Security File Country File]: Congo, box 85. In Gleijeses, p. 218

²¹ In cable from Godley to Secretary of State, CIA Intelligence Information Cable, 'Situation Report of Stanleyville, 11-14 January 1965,' NSFCF: Congo, box 85. In Gleijeses, p. 218

²² Godley to Department of State, 'Belgian Presence and Belgian Policies in the Congo,' 2 December 1965, FOIA, Department of State, microfiche 8503217; CRISP, *Congo 1964*, 357-59, 363-64; CRISP, *Congo 1965*, 300-301. In Gleijeses, p. 217; Weissman (p. 269) indicates that overt diplomacy made an essential contribution to the success of covert operations during this period.

dissimilar to those constraining states' own publicly accountable military forces when operating in an international environment and therefore subject to public review and international law. This tiny insight does not appear to be exceptional and is crudely representational of the types of experiences that occurred with other predominantly white mercenary troops between 1960-1964 who were involved in the Katangan secession attempt, largely with the tacit approval of other states and international bodies.²³

The Congo, between 1964-1965, was the first instance of American use of mercenaries in Africa and was deemed a successful policy achieved at a very low cost.²⁴ The American view of success stems in part from an ideological status-quo they wished to perpetuate, and subsequently did, rather than the fulfilment of an African security objective or civil public-goods' dispersal.²⁵ The impact of the mercenaries on civilian security appears to have been somewhat less than successful.²⁶ What seems clear is that the unrestrained and completely self-interested deployment of mercenaries did not assist the Congo achieve a stable independence, maintain territorial integrity or further civil-goods' objectives, and did little to encourage any degree of confidence in external powers' abilities or willingness to achieve these. It must be conceded however, that the mercenaries in the first Congo conflict, by and large, successfully did that which they were supposed to; run destabilising operations against internal civilian and military targets.²⁷

Covert security agency oversight and deniability for their political masters allowed mercenaries' behaviour and standards of professionalism to fall short of what

²³ Schatzberg, pp. 321-325. These would include France, Belgium, England, Rhodesia (South Africa), the O.A.U. (Organisation for African Unity), Cuba, USSR, and China. The UN also appeared to be supporting US interests and, by extension, were complicit in their use of mercenaries.

²⁴ Gleijeses, p. 237

²⁵ Weissman, p. 263

²⁶ Latzko, David. 'The Market for Mercenaries.' Conference Presentation. At:

<http://www.personal.psu.edu/~dx131/research/presentations/mercenary.html> p. 8/12. Accessed, 23/10/10

²⁷ Musah, p. 912; Weissman, p. 263

might be reasonably expected from regularly deployed modern military forces. This saw egregious breaches of human rights being perpetrated and military standards and civilian objectives being unrealised. Given the lack of control various laws have over twenty-first century private military contractors, the opportunity for a similar trajectory is concerning.

Through the 1970's, mercenaries reappeared in Angola during the lead-up to and following Angolan independence. This was concurrent with conflict between *União Nacional para a Independência Total de Angola* (UNITA) and the *Movimento Popular da Libertação de Angola* (MPLA). These central but by no means only antagonists represented the veiled ideological belligerence between the former Soviet Union and Cuba (backing the MPLA), and the US and South Africa (backing UNITA).²⁸ It was noted by commentators that the earlier Congo intervention by the Americans bore a similarity to the Angolan events and the then Secretary of State Henry Kissinger suggested that the Angolan independence posed the same threat to US security that Congo independence had.²⁹ This being the case it seems hardly remarkable that mercenaries were again employed with similar results and as such it is sufficient only to mention it in the passing chronology. It did not indicate the end of Angolan or African security issues, these being persistent and widespread.³⁰ Evidently in these instances, uncontrolled private military force was not characterised by professionalism or culpability for transgressions.

Cold War patronage had assisted many African rulers manage domestic threats from post-colonial ethnic rivalries and powerful local strongmen. The removal of foreign aid, loan, military and diplomatic support to weak quasi-states threatened to

²⁸ Le Billon, Philippe. 'Angola's Political Economy of War: The Role of Oil and Diamonds, 1975-2000.' *African Affairs*, No. 100 (Jan., 2001), pp. 55-58. Again, it was a proxy struggle for ideological superiority and resource exploitation contextualised by ethnic rivalries.

²⁹ Weissman, pp. 263-264 + pp. 285-286.

³⁰ Francis, David J. 'Mercenary Intervention in Sierra Leone: Providing National Security or International Exploitation?' *Third World Quarterly*, Vol. 20, No. 2 (Apr., 1999), pp. 319-321.

disrupt delicate internal conditions and led to West Africa being among the most volatile regions in the world. In the wake of the disintegration of the Soviet Union and the 1989 Cold War termination, the superpowers' interest in weak states waned and aid became conditional upon bureaucracy enhancement, political and economic liberalisation.³¹

Contradicting this, weak states' rulers attempted to deny power bases to their potential rivals by deliberately sabotaging their own bureaucracies – doling out state office to local allies.³² Additionally, the rulers of some frail states used creditor demands to privatise state agencies and liberalise markets as an excuse to hire foreign companies that could also provide private military force. This served to further the interests of both the vulnerable rulers and foreign actors by controlling resources and denying independent warlords access to them.³³

In a regulatory atmosphere that encouraged the use of mercenaries it is unsurprising that they proliferated. Weak recognition of international norms and laws by interested states served to further undermine their effectiveness in controlling mercenaries. It could be observed though, that revulsion at mercenaries' methods and dissatisfaction at their outcomes (encouraged by the punitive void), resulted in a more professional and self-controlled alternative eventually being offered by the market.

While most mercenary activity of the 1960s and 1970s appeared ruthless, rude and unsophisticated, some private military elements matured into competitive

³¹ Gumedze, Sabelo. 'The Private Security Sector in Africa.' Institute for Security Studies, Paper 133 (February 2007), p. 5; Singer, P.W. *Corporate Warriors*. Cornell University Press, Ithaca, 2004, p. 3; Oyebade, Adebayo., and Alao, Abiodun. (eds.). *Africa After the Cold War*. Africa World Press, Inc. New Jersey, 1998. p. 123; Reno, William. 'Weak States and Commercial Alliances.' *African Affairs*, Vol. 96, No. 383 (Apr., 1997). pp.165-166; Adebajo, Adekeye. 'The Security Council and Three Wars in West Africa.' *The United Nations Security Council and War*. Lowe, Vaughn et al (eds). Oxford University Press, Oxford, 2008. p. 466

³² Migdal, Joel. *Strong Societies and Weak States*. Princeton University Press, Princeton, 1988. In Reno, p. 166

³³ Reno, p. 167

businesses offering suites of security services and products by the 1990's.³⁴ The new corporatised mercenaries or private military companies (PMCs) as they became known, now operated in Africa with the primary motivation of securing profit from diamonds, oil, and other valuable mineral resources as opposed to the killing for profit motive that characterised earlier mercenary employment. This would indicate a rudimentary alignment of state and public security objectives. The PMCs worked alongside mineral concessions to secure strategic mineral fields and having accomplished this, relinquished control of them to government. They were rewarded by governmental concessions to companies owned by or affiliated with the PMCs. These strategic minerals would thus finance a conflict. This established a link between low-intensity conflicts and strategic resources. It also introduces the concern that control over the sovereignty of strategic resources could pass out of a country's citizens and into the hands of foreign shareholders by the intervention private military actors.³⁵ This of particular interest currently as it continues to have implications for Iraq and the security and sovereignty of their oil resources. There may well be future implications for North African states in the wake of present tensions.

After gaining independence from British rule in 1961, the previously exemplary West African state of Sierra Leone fell victim to a corrupt one-party system favouring personalised rule. First Siaka Stevens, then his hand-picked successor General Joseph Momoh oversaw the steady decline of the country's governmental institutions. The military, the rule of law and the economy were terminally damaged as a result of the concerted mismanagement.³⁶ Unemployment was widespread and the disaffected and disenfranchised began to coalesce under ex-Sierra Leone army corporal Foday Sankoh

³⁴ Howe, Herbert M. 'Private Security and African Stability: The Case of Executive Outcomes.' *The Journal of Modern African Studies*, Vol. 36, No. 2 (1998), p. 307; Vines, Alex. 'Gurkhas and the Private Security Business in Africa.' (1999). At: <http://www.issafrica.org/Pubs/Books/PeaceProfitPlunder/Chap7.pdf>. Accessed, 22/10/10.

³⁵ Francis, pp. 322-323.

³⁶ Singer, p. 110

in the late 1980's. They were organised into groups that worked against the Momoh government – the All People's Congress (APC) - and became known as the Revolutionary United Front (RUF). Their professed democratic ideology was loosely held and concealed a motive of financial gain.³⁷ The leader of neighbouring Liberia, the despotic Charles Taylor, provided Sankoh's followers with arms, ammunition, and guerrilla warfare training in Libya. The civil war that followed was conducted with his tacit approval.³⁸ Once again, the meddling of external powers was a catalyst for private military intervention and this was easily accomplished in the absence of credible international legal proscription.

In late March 1991 the RUF moved across the border into Sierra Leone along with some mercenaries from Burkina Faso, some dissident nationals, and some Liberian fighters loyal to Taylor.³⁹ Originally numbering about 100, they terrorised civilians and immediately concentrated on securing towns in the diamond-rich area of Kono.⁴⁰ The resource revenue then funded their future war efforts.⁴¹ The Republic of Sierra Leone Military Forces (RSLMF) was undersized and under-trained and consequently were unable to repel the RUF. A vigorous recruitment effort by Momoh increased the governments' force size from 3,000 to 14,000 within a few months but this only served to transform a small incompetent force into a much larger one. Momoh was ousted in a military coup by twenty six year old Captain Valentine Strasser of the National

³⁷ Paul, et al. *Victory Has a Thousand Fathers*. Rand, National Defense Research Institute, Santa Monica, 2010. p. 158. US ambassador to Sierra Leone from 1995-98, John L. Hirsch insists that contrary to conventional wisdom, the main RUF objective for the 1991 action was not diamonds but personal revenge against Momoh by Sankoh. Hirsch, John L. 'War in Sierra Leone.' *Survival*, Vol. 43, No. 3 (Autumn 2001), p. 150

³⁸ Francis, p. 325. Libya's Colonel Muammah Ghaddafi allegedly also had a grand scheme to 'revolutionise' the West African body politic.

³⁹ Hirsch, pp. 147-151.

⁴⁰ Bregner, D. *In the Land of Magic Soldiers: A Story of Black and White in West Africa*. Farrar, Straus, and Giroux, New York, 2004; Abdullah, I., and Muana, P. 'The Revolutionary Front: A Revolt of the Lumpenproletariat.' In, C. Clapham (ed), *African Guerrillas*. James Currey, Oxford, 1998. In, Hough, Leslie. 'A Study of Peacekeeping, Peace-enforcement and Private Military Companies in Sierra Leone.' *African Security Review*. Vol. 16, No. 4 (2007), p. 10

⁴¹ Selber, Jesse., and Jobarteh, Kebba. 'From Enemy to Peacemaker: The Role of Private Military Companies in Sub-Saharan Africa.' *Medicine and Global Survival*, Vol. 7, No. 2 (February 2002), p. 91. Hirsch

Provisional Ruling Council (NPRC) in April 1992. The augmented RSMLF proved to be even more undisciplined and inept than its precursor and became known for soldiering by day and looting civilian homes by night, often collaborating with the RUF rebels, which eventually earned them the pejorative of ‘sobels’.⁴²

The NPRC government was initially sympathetic to the RUF and attempted to incorporate them into their political structure but the reconciliation was rebuffed and the RUF continued to terrorise the countryside in horrific fashion, slowly pushing the Sierra Leonean state towards complete failure.⁴³ The rebels had openly admitted to a policy of targeting civilians with torture, rape, and murder. They employed child-soldiers in their attacks and amputated captured civilians’ arms as a calling-card. Night-time massacres, roadside ambushes and machete mutilations were a common feature of life in Sierra Leone by 1995, earning it the distinction of being host to one of the most vicious civil wars in history.⁴⁴ The potential for current intra-state rivalries to follow this example is still present.

This would have been the point that some manner of humanitarian military intervention might be deemed appropriate but the international community had suffered a paralysis and refused to become involved in African intra-state conflicts. Compounding this, a lingering public distaste for ‘mercenaries’ as private military force was still known (possibly due to the imprecise terminology in International Humanitarian Law), precluded any international states’ public acknowledgement of a suitably qualified private military intervention. This is predominantly still the case today.

The loss of agricultural trade, diamond fields, bauxite and rutile (titanium dioxide) mines brought government revenue flow to a standstill, deteriorated the

⁴² International Crises Group. ‘Sierra Leone: Time for a New Military and Political Strategy.’ Report No. 28 (11 April 2001), Freetown/Brussels; Francis, p. 325; Hough, p. 10; Selber and Jobarteh, p. 91

⁴³ Selber and Jobarteh, p. 91

⁴⁴ Singer, p. 3

nations' state-apparatus, and strangled the economy. Multinational corporations who owned the mineral concessions overtaken by the RUF, sought to have the insurgents ejected so their profitable extraction businesses might resume. Military commanders whose job it was to protect these concerns allegedly colluded with the rebels.⁴⁵ Strasser attempted mandatory conscription into the RSLMF when it became clear his own military, ineffective, unpaid and in disarray, could not control the anarchic conditions which eventually threatened to overtake the capital. Failing to receive timely assistance from a generally disinterested outside-world and an ineffectual UN force intervention, Strasser invited the private military company Executive Outcomes to present an immediate solution.⁴⁶

The initial Executive Outcomes (EO) contract with the Sierra Leonean government (NPRC) required them to: supply 100-150 men (the composition of which is explained further down) supported by helicopters, help the Sierra Leone army (RSLMF) drive the RUF from Freetown and its surroundings, stabilise the area around the capital, regain control of the diamond areas at Kono for the government, help stabilise the entire country, retrain the army and a militia, supply logistical and communications support and assist the army with transportation needs. This would facilitate either bringing an end to the war or force the start of negotiations between the warring parties.⁴⁷ The broad plan consisted of flying an advance party to Freetown comprised of combat specialists who would clear ground for the following team. Then an advance team would make preparations to relieve rebel pressure and shore up the defences of Freetown. The first batch of SLA troops were to be trained by EO concurrent to this. When Freetown was secured, the first strategic target would be the Kono mining district and surrounds. The loss of which would deny the RUF further

⁴⁵ *African Confidential*, 19 July 1996. In Reno, p. 180

⁴⁶ Selber and Jobarteh, p. 91

⁴⁷ Barlow, pp. 324-325.

war-funding. Following piecemeal tracking, attacking and destroying rebels, EO would assist locals wherever possible. Having seen the success of this in their Angola operation, it was envisaged they would work against the rebels' cause. Lack of reliable intelligence on the ground required the entire plan to allow for flexible and aggressive action. Also it was necessary to have a command element, a training element, and a rapid-reaction force to deal with RUF actions.⁴⁸

The immediacy with which the EO plan was formulated indicates a very flexible military capability and it is unexpectedly the case that the lack of regulatory control or inhibiting international authority actually assisted their adroit deployment. Capitalising on the torrent of cheap and sophisticated weapons haemorrhaging from the former Soviet Union and a talented source-pool of ex-apartheid, professional soldiers from South Africa, Eeben Barlow was able to assemble an extensive database of military personnel and equipment.⁴⁹ Executive Outcomes (EO) arrived in Freetown in April 1995 and within weeks had pushed rebel fighters out of the suburbs, where they had been battling government forces, and secured the diamond mining areas by mid-year.⁵⁰ Following the first contract success worth US\$15 million, supplementary EO contracts over the next twenty one months totalled \$35 million. This represented about one third of Sierra Leone's annual defence budget.⁵¹

A key element of the EO strategy was gaining the support of the local population who could then help with the anti-insurgency, this was supported by setting up and training local units to provide civilian security. The independent fighting force policy engendered a feeling of admiration among the locals that gave EO a legitimacy never enjoyed by the RSLMF. It was this 'hearts and minds' philosophy that informed the

⁴⁸ Barlow, p. 324

⁴⁹ Hough, pp. 10-11.

⁵⁰ Reno, p. 180

⁵¹ Hough, p. 11; Shearer, David. 'Outsourcing War.' *Foreign Policy*, No. 12 (Autumn 1998), p. 73

Executive Outcomes overall strategy in Sierra Leone.⁵² As the government had set a cap on the number of RSLMF soldiers were permitted to train, fearing another coup, EO organised and trained the Kamajors – local hunters who had coalesced into groups to defend their villages when government troops could not. Executive Outcomes became a force multiplier for these renamed Civil Defence Forces (CDF) and we able to leverage their knowledge of the local jungle, and utilise their intelligence-gathering from the country population. The latter capabilities outstripped the more urban RUF.⁵³ Apparent here is recognition by EO, that the attainment of public security goods were essential to the successful completion of their contract and the necessity of engaging with the public to achieve that end.

Another contributing factor to the success that Executive Outcomes enjoyed is the level of experience and professionalism that was brought to bear. Most of the soldiers and officers came from South Africa's former 32 Battalion, the Reconnaissance Commandos, the Parachute Brigade and the paramilitary '*Kroevoet*' or 'Crowbar'. These four groups comprised the spear-tip of South Africa's destabilisation campaign throughout southern Africa during the 1980's and saw extensive action together with the UNITA guerrilla forces in Angola. Some 70% of EO's combatant-force were reportedly coloured, this aided crucial acceptance by the local population in Sierra Leone.⁵⁴ The common experiences of the recruit base helped cement them together as a potent and cohesive force, something often missing in their mercenary predecessors.⁵⁵ The military professionalism of the EO intervention is in marked contrast to earlier mercenary efforts described above.

⁵² Reno, p. 181

⁵³ Hough, p. 11

⁵⁴ Howe, p. 310; Moller, Bjørn. 'Private Military Companies and Peace Operations in Africa.' Seminar Paper, Department of Political Sciences, University of Pretoria, 8 February 2002. p. 5

⁵⁵ Cleaver, Gerry. 'Subcontracting Military Power: The Privatisation of Security in Contemporary Sub-Saharan Africa.' *Crime, Law & Social Change*, No. 33 (2000), p. 139

The military effectiveness of Executive Outcomes is indicated by the relative ease with which their small, highly trained and professional force were able to reverse the military tide in Sierra Leone. Experience in combat actions and as a force multiplier proved instrumental in the battle for the Kono mines; utilising ex-Russian MiG fighter aircraft and Mil helicopters greatly assisted ground and intelligence operations. The ability to train and improve local military elements was possibly more effective than the combat facility alone. Rapidly developed local intelligence assets proved most successful and the experience EO's officers brought from the South African Defence force, where many had trained and officered coloured contingents, was key to the cooperative integration between white officers and black soldiers.⁵⁶ This marks a distinct departure from previous mercenary endeavours and can instruct contemporary formations of private military contractors.

By the close of January 1996, EO-backed forces had achieved their objective for the Sierra Leonean government and returned to them control of the southern coastal rutile and bauxite mines, notably those operated by foreign concerns. EO's activities had helped facilitate a cease-fire, aided the critical economic and political situation and created a stability which attracted foreign investors back. This helped lower foreign debt by twenty five percent in 1995 and 1996. Canadian General Ian Douglas (Ret), a United Nations negotiator, conceded that: 'E.O. gave us this stability. In a perfect world, of course, we wouldn't need an organisation like E.O., but I'd be loath to say they have to go just because they are mercenaries'.⁵⁷

It would be unfair to associate EO with the types of mercenaries previously encountered. In the same regulatory void that failed to provide guidance to their predecessors, EO acted with a high level of professionalism, self control and

⁵⁶ Howe, pp. 315-316. Howe also states that the intelligence capability shown by EO was conspicuously lacking in other recent African interventions, notably ECOMOG in Liberia.

⁵⁷ *Ibid*, p. 201

competence. This indicates that a modern private military mechanism is not without benefit in some, but not necessarily all, circumstances. It also highlights the inadequacy of the regulatory controls that would otherwise prohibit this type of constructive application.

Following the combined efforts of the Kamajors and EO, a forced peace agreement was signed in November 1996. In forcing this agreement, the Civil Defence Force and EO had shown the ineptitude of the NPRC and the RSLMF. The CDF had grown to between two and three thousand strong and had become the mainstay of a regional defence force. A schism therefore developed between the CDF and the RSLMF as credit for the stability was bestowed upon the Kamajor militia. One result of this was to push the RSLMF further toward an affinity with the RUF and a lack of logistic support from the government during this time allowed the RUF to re-occupy areas they had previously controlled.⁵⁸

As these strings unravelled, the government had been unable to pay its bills between May and November 1995. Consequently, EO in Sierra Leone was being financially subsidised by another EO operation in Angola.⁵⁹ It was with approaching elections and threat of another coup that, failing a firm payment schedule, Executive Outcomes indicated its intention to withdraw in December 1995. There were hurried negotiations that occurred in a pressurised atmosphere of domestic and international demands for a hastened transition to civilian rule. When Strasser announced an election date of February 1996 he was overthrown by his deputy, Brigadier Julius Bio on January 16. This was regarded as an attempt by the military to minimise the threat of retrenchment they were facing after the elections. A week afterwards, the RUF signalled

⁵⁸ Douglas, Ian. 'Fighting for Diamonds – Private Military Companies in Sierra Leone.' At: <http://www.issafrika.org/Pubs/Books/PeaceProfitPlunder/Chap9.pdf> p. 184. Accessed 15/11/10.

⁵⁹ In 1995 the Clinton administration threatened to block UN aid to Angola unless President Dos Santos terminated the government's contract with EO and replaced it with MPRI (Military Professional Resources Incorporated – a private military firm headquartered in Virginia, USA). MPRI was to ensure the security of US interests like the Soyo oil fields and maintain significant access to the Luanda government for US business. Francis, p. 333

a unilateral ceasefire and willingness to begin unconditional talks with the Bio government. It later transpired that a member of the RUF high command was, in fact, Bio's elder sister. Elections resulted in the return of the government to civilian control under Ahmad Kabbah of the Sierra Leone Peoples Party (SLPP). The appointment of a Kamajor, Chief Norman, to the post of Deputy Minister of Defence continued to aggravate and weaken the RSLMF throughout 1996 and early 1997.⁶⁰ This illustrates a weakness in the deployment of private military contractors – the sudden removal of their influence without replacement by a credible alternative, invites further trouble.

The peace agreement that Kabbah signed with the RUF in Abidjan in November 1996 was later reneged on by the RUF's Foday Sankoh in early 1997. Following this, the army overthrew the Kabbah government on 25 May 1997 (Executive Outcomes having departed some four months before) and major Johnny P. Koroma was invited to head the new regime. The new Armed Forces Revolutionary Council (AFRC) asked the RUF to join them with Sankoh as deputy president. Several RUF members received cabinet posts. The nature of the previous governments' regional support base saw alienated politicians, civil servants, lawyers and members of the elite from northern and western areas support the AFRC.⁶¹

The Economic Community of West African States (ECOWAS) attempted a three pronged approach to overturn the coup; dialogue, sanctions, and then force by extending the mission of the ECOWAS Ceasefire Monitoring Group (ECOMOG) who were tasked in Liberia. A UN Security Council Resolution (1132; 1997) endorsed ECOMOG policies and placed an oil and arms embargo against Sierra Leone.⁶² The

⁶⁰ Douglas, pp. 184-185.

⁶¹ Bangura, Yusuf. 'Failure of Governance in Sierra Leone.' *The Journal of Modern African Studies*, Vol. 38, No. 4 (Dec., 2000), pp. 554-555.

⁶² Lowe, et al. *The United Nations Security Council and War*. Oxford University Press, London, 2008. p. 476. In the aftermath of Kabbah's ouster, the UN and the US gave tacit support to any action that would restore democracy in Sierra Leone and Sandline informed Washington of its activities there: Aning,

ECOMOG military operation was unsupported by the UN but found willing contributors in Nigeria and Guinea. They were assisted by EO's colleague-company Sandline International (of British origination and associated with the Branch Group), who provided thirty five tons of military hardware to the Nigerian forces as well as intelligence, logistical, and air support.⁶³ It is noteworthy that their goal of liberating Freetown and restoring Kabbah to power was achieved but other operations in the mining districts produced a stalemate between the RUF and ECOMOG.⁶⁴ The mainstay of Kabbah's return to power in March 1998 (and ECOMOG's success) was the continued support of Nigerian military officials and consequently they and their soldiers became instrumental in Sierra Leone's strategic policy-making decisions.⁶⁵ This would indicate the loss of their political sovereignty to a foreign, albeit African, state; something that was not likely to be the case with the EO employment contract and mitigates in their favour.

Additional to this, in order to retain the continued services of EO the Sierra Leonean government had made financial commitments it could not immediately keep. Having agreed to pay EO a monthly fee of US\$1.225 million, it had been reduced to \$1 million just prior to their departure in February 1997.⁶⁶ With an already outstanding debt of \$18.5 million, the government rewarded the lower monthly indemnity to EO by, reportedly, awarding mining concessions that were in turn sold to the British energy company, Branch Group. It has been asserted that the Branch Energy connection went as far as financing EO's initial, and then on-going, costs when the Sierra Leonean

Emmanuel Kwesi. 'Wither Africa's Security in the New Millennium: State- or Mercenary-induced Stability?' *Global Society*. Vol. 15, No. 2 (2001), p. 167.

⁶³ Cilliers, Jakkie., and Cornwell, Richard. 'Mercenaries and the Privatisation of Security in Africa.' *African Security Review*. Vol. 8, No. 2 (1999), p. 2

⁶⁴ Hough, p. 12

⁶⁵ Bangura, pp. 555-556.

⁶⁶ Sources vary with the accuracy of this date; Francis (p. 331), says January 1997, as does Douglas (p. 187).

government could not fulfil its obligations.⁶⁷ When EO's contract expired, they left behind 100 of their personnel (from a contingent of 285) who were hired by an EO sister-company called Lifeguard. They were to be responsible for Branch Energy's on-site mining security. This opened Sierra Leone to accusations that it had mortgaged the sovereignty of its future wealth to a foreign PMC.⁶⁸ Similar fears have emerged in Iraq over the large scale use of foreign private military contractors to secure Iraqi oil resources.

These events (and those illustrated in Chapters 2 and 3) do emphasise an underlying weakness with the employment of private military: fighting stops when the compensation does. Also, while the post-colonial mercenary turmoil in the Congo had been largely financed by external states, these states showed no similar commitment in Sierra Leone when they might have subsidised a viable private military humanitarian intervention. This may have been due to an existing unease with private military as still being associated with mercenaries, in turn because the relevant laws (UN and OAU) would not have made any clear distinction between the two activities. This legal anomaly was to have serious repercussions.

The RUF launched 'Operation no living thing' in January 1999 that saw the capital of Freetown suffer a familiar orgy of civilian massacre and house-burning. ECOMOG's military response could not discern between civilians and AFRC/RUF supporters and subsequently they tortured, raped and summarily executed all and sundry for several weeks. This brought them eventual victory but at a cost of between 3,000 to 6,000 lives (mostly civilians), the displacement of 150,000 residents and the reported abduction of 2,000 children destined for RUF military service.⁶⁹ The RUF remained undefeated outside the capital and coerced a peace agreement with the Kabbah

⁶⁷ Howe, p. 206

⁶⁸ Isenberg, David. 'Soldiers of Fortune Inc.: A Profile of Today's Private Sector Corporate Mercenary Firms.' Monograph, Center for Defense Information, Washington DC, November 1997. p. 5/22.

⁶⁹ Hough, pp. 12-13.

government that included a substantial share of power, despite their appalling record of abuses.⁷⁰

In May 2000, the Nigerian battalion was compelled to withdraw due to their own domestic pressures and this constituted the remains of the withdrawn ECOMOG force. They were replaced by some 11,000 personnel of the United Nations Mission in Sierra Leone (UNAMSIL), who assumed complete military control of security on the ground and also filled roles in civil affairs, police, administration and technical areas. The RUF took advantage of the newly deployed, untested troops and within two weeks of their arrival had disarmed and taken hostage nearly 500 UN soldiers, observers and personnel. A humiliating blow for the UN which resulted in a serious, if not total, loss of local confidence in their abilities and mission. They would not find it possible to leave the country until December 2005.⁷¹

The conundrum remains that, would these destructive events have transpired if Executive Outcomes had received international support to continue with their successful dispersal of public defence and security goods. That private military companies are currently operating with, arguably, some success in contemporary international operations indicates that it is likely.

States' domestic regulatory control of the early mercenary elements in Africa was limited and at best, disinterested; this being conducive to the deniability foreign political entities desired. Poor regulation at an international level meant control loss at a state level and on downwards. The result was destabilising and destructive to internal state security as it was not generally aligned with widespread dispersal of civil security goods. Mercenary's mission failure in Congo resulted from individual self interest, belligerent external political interests, debased military professionalism and corrupt

⁷⁰ Cleaver, p. 143

⁷¹ Olonisakin, 'Funmi. *Peacekeeping in Sierra Leone*. Lynne Rienner Publishers, London, 2008. pp. 3, 138-140.

normative ethical standards. Private military company success in Sierra Leone relied on sustainable finance, clear contract intentions that served to increase democratic civil security goods, professional command and operations, and close participation and integration with those whose interests were being served. This did not ensure long-term success as internal political issues were not adequately addressed and this was not Executive Outcomes' mandate. Short-term security was rapidly enabled in Sierra Leone by adroit PMC operations but the advantage was not followed through competently by international entities resulting in a drawn-out debacle that might well have been avoided. This case study indicates that a professional private military force *can* be productively employed in delicate international contingency operations even without appropriate regulatory mechanisms and international laws in place. It does not however, suggest they *should* be.

Chapter 6

Case study 5: **Iraq and Beyond ca. 2003-**

John Rivas, 27, a former Chilean marine, said the work in Iraq would provide a "very good income" that would allow him to support his family. "I don't feel like a mercenary," he said.¹

The US-led, 2003 occupation of Iraq by an ad-hoc coalition of international states was conducted with comprehensive assistance from private military and security companies and the prevalence of these private actors was such that the conflict has been described as the first 'privatised war'.² Subsequently, anxieties about the intrusion of private military companies and civilian contractors into states' public military operations continues to occupy commentators across multiple disciplines.³ This chapter will illustrate some of the more persistent issues with the public control mechanisms of civilian private military and security contractors in a contemporary conflict paradigm.⁴ Additionally, it further exposes the problem of defective regulatory control and the attendant problems this generates for civilian control of states' military affairs.

Unease surrounding the decision to invade Iraq stemmed from several quarters and has been summed up superbly by Richard Falk: 'Recourse to war against Iraq in March 2003 on the facts and allegations that existed at the time is regarded around the world as so flagrantly at odds with international law and the UN Charter as generally understood to have little or no weight as a *legal* [emphasis in original] precedent'.⁵

¹ Interview with a US private military contractor, during the 2003 Iraq War. At: <http://www.guardian.co.uk/world/2004/mar/05/iraq.chile>. Accessed: 25/07/08.

² Leander, Anna. 'Private Agency and the Definition of Public Security Concerns: The Role of Private Military Companies.' Political Science Publications, No. 8/2004, Faculty of Social Sciences, Syddansk University, 2004, p. 3. This is historically, not entirely correct. Controversial also, are claims made about the level of private involvement: See, Singer (2005), pp. 120-123.

³ Fabre, Cécile. 'In Defence of Mercenarism.' *British Journal of Political Science*, Vol. 40 (2010), p. 539; Biggar, Nigel. 'The Invasion of Iraq: What Are the Morals of the Story?' *International Affairs*, Vol. 87 (January 2011), p. 29; Goodsell, Charles T. 'Six Normative Principles for the Contracting-Out Debate.' *Administration and Society*, Vol. 38, No. 6, (January 2007), p. 678

⁴ Heavy US involvement reflects much of the source material and commentary herein. The setting continues in the context outlined in Chapter 1.

⁵ Falk, Richard. 'The Iraq War and the Future of International Law.' *Proceedings of the Annual Meeting (American Society of International Law)*, Vol. 98 (March 31-April 3, 2004), p. 263

Other concerns include contravening the norm of non-intervention in the affairs of sovereign states and disrespect for territorial sovereignty.⁶ While these are valid concerns, the emphasis in this chapter is oriented toward the efficacy and deficiencies of international and domestic regulatory instruments in controlling private military and security companies and their employees. This is observed primarily from the US perspective as they reflect the preeminent exemplar of large-scale modern contractor use, the available source material is largely focused around them, and the situation is currently ongoing.

A number of modern Western democracies (the US, UK and France for example) no longer hold to the state's traditionally accepted monopoly on legitimate political violence that once was a defining, if not idealised, characteristic of a sovereign state.⁷ Consequently, in 2001 the Pentagon's civilian defense department employees were exceeded by private contractors for the first time.⁸ By 2003, the number of private security providers in the US was close to two-thirds the size of the armed forces. The trend was also evident in the composition of their internationally deployed military force.⁹ Indeed, the Iraq invasion would have been improbable if not impossible without the support of private military, security companies and contractors, and they have been described as: 'the American Express card of the military, the American military doesn't leave home without them'.¹⁰

⁶ Falk, p. 265

⁷ History shows that the general assumption that warfare was conducted by public militaries is an idealisation and the private provision of violence was a routine aspect of international relations prior to the twentieth-century. Singer, P.W. *Corporate Warriors*. Cornell University Press, Ithaca, 2003, p. 19; In a reflection of changing citizen obligation values in Ancient Greece and the Renaissance, contemporary USA also suffers a deficit of public/citizen military volunteers. In Krebs, Ronald R. 'The Citizen-Soldier Tradition in the United States: Has its Demise Been Greatly Exaggerated?' *Armed Forces and Society*, Vol. 36, No 1 (October 2009), pp. 154-155.

⁸ Isenberg, David. *Shadow Force: Private Security Contractors in Iraq*. Praeger Security International, London, 2009, p. 1

⁹ Krahmman, Elke. 'Security: Collective Good or Commodity?' *European Journal of International Relations*, Vol. 13, No. 3 (2008), pp. 380 + 388.

¹⁰ Grier, Peter., and Lubold, Gordon. 'Private Security in Iraq: Whose Rules?' *Christian Science Monitor*, September 20, 2007. In Scahill, Jeremy. *Blackwater*. Nation Books, New York, 2007, p. 458

Responding to an April 2002 US Defense Department Senior Executive Council initiative, the US Army identified 200,000 positions that showed potential for outsourcing. Following through on this saw the number of armed private contractors in Operation Iraqi Freedom (starting with the 2003 invasion) surge and recede proportionate to need. From roughly 10,000 in 2003 to approximately 20,000 in 2004, ballooning to 30,000 in 2007, and deflating to 10,422 by March 2009. During this time the numbers of *all* civilian contractors as compared to US troops was reported as 190,000 private contractors to 160,000 troops in July 2007. By February 2008 it was 161,000 contractors to 155,000 troops and by December 2008 the ratio was 173,000 to 146,000 respectively.¹¹ The actual numbers of privately contracted personnel serving in Iraq and elsewhere is disputed but in November 2008 one estimate was that one in every five combatants in Iraq was not a soldier.¹² This number conflicts with a more recent source that put the ratio of contractors to uniformed troops in Iraq, as of 2008, at 1 to 1.¹³ Yet another recent source puts the number of contractors supporting military operations in Iraq at nearly 200,000 with about 30,000 providing security services.¹⁴

This highlights one problem that contributes to the overall control issue: no authority has accurate data to indicate exactly how many civilian contractors are actually involved in all military and security operations. The latter aspect has significant domestic ramifications for statutory US government oversight and therefore the ability of citizens to make informed decisions about their country's military affairs, and will be appraised further down. Additionally, the minutiae of data may seem inconsequential

¹¹ Cotton, Sarah K., et al. *Hired Guns: Views About Armed Contractors in Operation Iraqi Freedom*. Rand, National Security Research Division, Arlington Va, 2010, pp. 11-12.

¹² Hedahl, Marcus. 'Blood and Blackwaters: A Call to Arms for the Profession of Arms.' *Journal of Military Ethics*, Vol. 8, No. 1 (2009), pp. 19-20.

¹³ Dickenson, Laura A. 'Military Lawyers, Private Contractors, and the Problem of International Law Compliance.' *International Law and Politics*, Vol. 42 (2010), p. 356

¹⁴ Schaub, Gary Jr., and Franke, Volke 'Contractors as Military Professionals.' *Parameters*, (Winter 2009-10), p.88

but its accuracy helps weave together the invisible social contract between a modern civil state and its citizens, referred to in chapter one.

The figures demonstrate that there were and are significant numbers of civilian personnel, armed and unarmed, working within a military operational context. The military personnel they work alongside are constrained and directed by various international laws, sovereign state norms and codes.¹⁵ US domestic lawmakers have struggled to reflect the changing economic, political, and military realities that the private military industry presents but international law has experienced little legislative reform or progress.¹⁶ As a consequence, constraint does not extend to effectively embrace all the participants and the legal lacuna that contracted civilians operate in internationally has led to questionable practices and outcomes.¹⁷

These have occurred, in part, as a result of a failure by international and domestic regulatory mechanisms to adequately cover the resurgent state-use of private military in international operations. Currently, the United States is party to the 1949 Geneva Convention Relative to the Treatment of Prisoners of War. This provides that prisoners of war (POWs) must at all times be humanely treated, suffer no physical or mental torture, nor may any other form of coercion be inflicted on them to secure information. POWs who refuse to answer questions may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.¹⁸ Similarly, the Fourth Geneva Convention provides that civilians detained by an occupying power are entitled to in all circumstances, respect for their persons; they shall at all times be humanely

¹⁵ United States Government Accountability Office, *Testimony Before the Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform*. 'Rebuilding Iraq.' GAO-06-865T, June 13, 2006. pp. 6-7.

¹⁶ Ebrahim, Adam. 'Going to War With the Army You Can Afford: The United States, International Law, and the Private Military Industry.' *Boston University International Law Journal*, Vol. 28 (2010), p. 202; Leander (October 2010), pp. 467-468.

¹⁷ Falk, Richard., Gendzier, Irene., and Lifton, Robert Jay. *Crimes of War: Iraq*. Avalon Publishing Group Inc, New York, 2006, pp. xv-xviii; Yordán, Carlos L. 'America's Quest for Global Hegemony: Offensive Realism, the Bush Doctrine, and the 2003 Iraq War.' *Theoria: A Journal of Social and Political Theory*, Vol. 53, No. 2, Issue 110 (August 2006), p. 1

¹⁸ Geneva Conventions [III] Relative to the Treatment of Prisoners of War, Aug. 12, 1949. Operative October 1950.

treated, be protected from acts of violence and against insults and public curiosity.¹⁹ The US Department of the Army's Field Manual 34-52 directives on intelligence interrogation prohibits the use of force, mental torture, threats, insults, or exposure to unpleasant and inhumane treatment of any kind. Additionally, in 1994 the US enacted a statute criminalising the commission of torture by a US national outside the United States.²⁰ These codes were designed to, and do, influence the conduct of military personnel but they do not necessarily extend to cover civilian contractors.

The legal instruments of international and US domestic law seem clear and unambiguous. However, although endorsing these rights and duties 'the [US] President enjoys complete discretion in the exercise of his Commander-in-Chief authority in conducting operations against hostile forces, [and] any relevant US criminal statutes must be construed as inapplicable to interrogations undertaken pursuant to his Commander-in-Chief authority'.²¹ The latitude given to this interpretation of executive authority had previously been criticised for encouraging systematic abuse of prisoners at the Abu Ghraib detention facility in Baghdad but the caution went unheeded.²² 'Military necessity' was one reason submitted by the facility's US Army Reserve commander to the International Council of the Red Cross (ICRC) in response to the latter's subsequent inquiries. The result of the inquiries showed the Iraqi POWs' treatment by US military and civilian contractor personnel was 'tantamount to torture'.²³

The Commander-in-Chief's executive authority interpretation had therefore introduced a liberal degree of discretion into the operational interpretation of the

¹⁹ Geneva Conventions [IV] Relative to the Treatment of Civilian Persons in Time of War, Aug. 12, 1949. Operative October 1950.

²⁰ 'US Abuse of Iraqi Detainees at Abu Ghraib Prison.' *The American Journal of International Law*, Vol. 98, No. 3 (July 2004), p. 592

²¹ 'US Abuse of Iraqi Detainees at Abu Ghraib Prison.' *The American Journal of International Law*, Vol. 98, No. 3 (July 2004), p. 593

²² Ryder Report on 'Detention and Corrections Operations In Iraq, November 2003.' At: <http://www1/unm/edu/humanrts/OathBetrayed/Ryder%20Report.pdf>.

²³ 'US Abuse of Iraqi Detainees at Abu Ghraib Prison.' *The American Journal of International Law*, Vol. 98, No. 3 (July 2004), p. 594; Taguba, Major General Antonio M. Article 15-6, 'Investigation of the 800th Military Police Brigade 16 (2004). At: http://www.npr.org/iraq/2004/prison_abuse_report.pdf

relevant IHL POW protections. This effectively validated a subscription to an ‘ends justifying the means’ approach to the ethical and legal considerations; a disturbing shift in policy orientation. This might be plausible if accompanying punitive measures could be effected upon those deemed to have acted irresponsibly with such an approach. Failing that, it represents a significant change in the normative military-control arrangements currently enacted by modern democracies and impinges upon a civil approach to Just War principles.

The individuals involved in instigating, encouraging, overseeing, and participating in the 2003 Abu Ghraib abuses were US Army Military Police and civilian contractors from the private military firms CACI and Titan. Abuse of the detainees included punching, slapping, kicking, photography and videography of naked males and females, forced sexual acts, degrading physical and cultural impositions, and using police dogs to inflict injuries.²⁴ Some of the military staff involved were successfully sanctioned or prosecuted. The charges included dereliction of duty, cruelty, conspiracy, indecency, and assault.²⁵ None of the civilian contractors involved were criminally prosecuted by any authority because of jurisdictional deficiencies.²⁶

The contractors’ actions were found not to be covered by the US War Crimes Statute, Torture Statute, Military Extraterritorial Jurisdiction Act (MEJA), or the Patriot Act. The federal Torture Statute allowed the government to prosecute for torture committed outside the US. At the time of the Abu Ghraib events, the statute only applied to torture committed outside the special maritime and territorial jurisdiction (SMTJ) of the US. The newly introduced Patriot Act defined places such as Abu Ghraib

²⁴ Kierpaul, Ian. ‘The Mad Scramble of Congress, Lawyers, and Law Students, after Abu Ghraib: The Rush to Bring Private Military Contractors to Justice.’ *University of Toledo Law Review*, Vol. 39 (Winter 2008), p. 407

²⁵ ‘US Abuse of Iraqi Detainees at Abu Ghraib Prison.’ *The American Journal of International Law*, Vol. 98, No. 3 (July 2004), p. 595.

²⁶ Kierpaul, pp. 409 + 411.

(and the Guantanamo Bay detention facility) as within this jurisdiction. As a result, the Torture Statute did not apply to private military contractors.²⁷

The War Crimes Statute criminalises serious breaches of the Geneva Conventions but only when the Conventions apply to victims. President George W. Bush had deemed the Conventions inapplicable to unlawful combatants and with the status of many of the Abu Ghraib detainees uncertain, the War Crimes Statute was rendered immaterial. MEJA allowed for the prosecution of civilians in the employ of the Department of Defense (DoD) who commit a crime punishable by a year or more within the SMTJ, as was Abu Ghraib. However, the civilian contractors were in the employ of the Department of the Interior (DoI), negating the MEJA applicability which pertained to only DoD contractors.²⁸

The use of civilian contractors to conduct interrogations without satisfactory accountability raised substantial concerns about the extent of this extraordinary authority and discretion being wielded by persons outside the government who were seemingly beyond adequate measures for investigation or prosecution.²⁹ Despite apparent prior knowledge by the US Army Criminal Investigation Command, it was only after the abuses were made public that any action was taken.³⁰ That military personnel were held accountable but civilian contractors were not, is telling. It would reinforce a view that an engaged and informed public does have a constraining effect on the operational extent and methods of its' armed forces in a way that, currently, cannot occur with private military force. This substantiates the idea that a disconnect between

²⁷ Kierpaul, p. 409

²⁸ *Ibid*, p. 410

²⁹ International Center for Transitional Justice. ICTJ Research Brief: 'Selected Examples of Defence, Intelligence and Justice Investigative Reports into Detention and Interrogation Practices.' US Accountability Project, November 2008, p. 13

³⁰ Chesterman, Simon. 'We Can't Spy if We Can't Buy!': The Privatization of Intelligence and the Limits of Outsourcing Inherently Governmental Functions.' EUI Working Paper AEL 2009/2, Academy of European Law, European University Institute, 2009, p. 7

citizen control of governmental functions and civilian military contractors threatens to degrade existing normative regulatory mechanisms.

An incident that transpired in Baghdad's Nisour Square on September 16, 2007 showed attempts at contractor prosecution were still impotent three years after the Abu Ghraib events. On that day, the US-based PMC Blackwater Worldwide (renamed Xe Services early in 2009) was supplying an armed personal security detail for US State Department officials in convoy. Dispute remains over what triggered lethal action at a seemingly routine traffic stop but in the ensuing fracas 14-17 unarmed Iraqi men, women and children were killed and 20 wounded by Blackwater guards' weapons fire.³¹ The US Department of Justice (DoJ) later confirmed that one victim was shot in the chest while his hands were raised in an attempt to submit.³² At the time, contractors were not subject to Iraqi law which meant that months passed before they were indicted under the Military Extraterritorial Jurisdiction Act (MEJA). Difficulties in finding witnesses, completing a crime scene investigation, securing evidence, and statement inducements being offered by the US State Department to some defendants in return for immunity, eventually saw weapons and manslaughter charges being dropped.³³

In a nominal attempt to mend the jurisdictional loopholes of MEJA, the MEJA Expansion and Enforcement Act of 2007 was passed. This maintains jurisdiction over crimes committed abroad in war zones and encompasses only those PMCs in the employ of the Armed Forces, DoD, or by any other federal agency to the extent that their employment supports a DoD mission overseas.³⁴ The new bill eliminated wording that was deemed ill defined and directed contractors to work under a contract carried out

³¹ The actual number is unclear as 14 and 17 have been used by sources. See for contrast Chapman, Katherine J. 'The Untouchables: Private Military Contractors' Criminal Accountability under the UCMJ.' *Vanderbilt Law Review*, Vol. 63, No. 4 (2010), p. 1048; And Hedahl, p. 20

³² Hedahl, p. 20. This also appears to validate accusations that contractors do indeed conduct combat operations, inadvertent as they may be, which might render them unlawful combatants.

³³ Cotton, pp. 25-26.

³⁴ Military Extraterritorial Jurisdiction Act, Pub. L. No. 106-523, 114 Stat. 2488 (2000)) codified as amended at 18 U.S.C § 3261-7 (2004).

in an area, or in close proximity to an area (as designated by the DoD), where the Armed Forces are conducting contingency operations, rather than supporting the mission of the DoD. Jurisdictional parameters found to be problematic with the previous MEJA were amended but the US Congress this time failed to provide definitional clarity for the new MEJA. In particular, the key but ambiguous term ‘proximity’ was not fully defined by Congress, leaving ‘vague notions of proximity’ subject to ‘arbitrary and discriminatory enforcement’ by contractors.³⁵

Disconcerting also was the view of the US Government Accountability Office (GAO) prior to the Nisour events (but after Abu Ghraib), that private security contractors operating in Iraq were not generally subject to prosecution under the Uniform Code of Military Justice (UCMJ) in the absence of a formal declaration of war by Congress – as was the case with Operation Iraqi Freedom. The federal government could only impose sanctions in response to acts of misconduct. The GAO suggested that private security providers were subject to prosecution by the Department of Justice under applicable US federal laws, which include the Military Extraterritorial Jurisdiction Act (MEJA), the special maritime and territorial jurisdiction provisions of title 18 of the US code, and the War Crimes Act.³⁶ These have been shown to be ineffectual in pursuing successful prosecution of civilian contractors and therefore cannot be said to be a punitive mechanism acting to restrain them.

For the US at least, this has raised constitutional concerns. Various opinions assert that the privatisation of the national security apparatus poses risks to the separation of powers, transparency, or the fundamentals of democracy because ‘Congress would be largely constrained in reviewing the actions and practices of private military contractors’.³⁷ A supporting view is that functional dominance of contractor

³⁵ Kierpaul, p. 422

³⁶ GAO, *Rebuilding Iraq*, GAO-06-865T, June 13, 2006. pp. 6-7.

³⁷ Minow, p. 1025

control, oversight, and recruitment by the Executive Branch of government creates separation-of-powers problems because congressional checks over military action would be bypassed, thereby allowing the Executive to deploy private troops beyond jurisdictional reach.³⁸

Attention has also been drawn to the inability of the UN General Assembly Human Rights Council to achieve investigative cooperation from states whose use of private military contractors has created possible human rights abuses. Two incidents were reported involving an Australian PMC, Unity Resources Group. These occurred in Baghdad in March 2006 when an Australian national was shot, and October 2007 when two Iraqi women died. Responding to the UN Working Group's request for information on the alleged incidents, the Australian government intimated it understood that the Iraqi government was conducting an investigation and enquiries should be directed to them. They also gave information on the applicable Australian legal framework in general terms without reference to the circumstances of the incidents. The content of the Working Group's questions was: what is the nationality of the URG employees involved in the 2007 event, and was the Australian government carrying out its own investigation into the 2006 killing of the 72-year-old Australian national? As of 27 February 2009, the UN Working Group had received no response from the Australian government.³⁹

Included in the same UN report were references to the Nisour Square events and subsequent requests to the US government for guidance on the accountability and licensing of US-based PMCs. The US government's response was to cite the codes mentioned above and specifically mentioned DoD civilian contractors as the target for

³⁸ In Sullivan, Scott M. 'Private Force/Public Goods.' *Connecticut Law Review*, Vol. 42, No. 3 (February 2010), p. 861

³⁹ United Nations General Assembly, Human Rights Council, Working Group on the Use of Mercenaries. 'Report of the Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination.' A/HRC/10/14/Add.1, 27 February 2009, pp. 3-4.

tightening controls. The US government also noted that the Executive Branch was currently working on legislature that would enhance the existing framework of federal jurisdiction over PSC personnel operating abroad.⁴⁰ This is no doubt referring to the new MEJA of 2007, examined above and found to be suffering definitional challenges.

In spite of the legal status of contractors also being altered significantly in 2009 with the introduction of Article 12 of the Status of Armed Forces Agreement (SOFA), civilian contractors were generally still thought to be effectively immune from prosecution under US law.⁴¹ Underscoring this was the eventual dismissal of indictment charges brought by the US government against the five Blackwater Worldwide contractors involved in the disputed Nisour Square shootings.⁴² Introduction of the Civilian Extraterritorial Jurisdiction Act of 2010 (CEJA) was an attempt to definitively secure these jurisdictional loopholes.⁴³ This amendment would add an additional section to the MEJA and allows federal criminal prosecution for certain crimes, anyone employed or accompanying any department or agency of the United States other than the Armed Forces. This would remove liability distinction based upon department or agency separated contracts.⁴⁴ This may well further enhance control of US civilian contractors by more direct punitive threat but the disciplinary deficits referred to were not isolated events and, given that, unprofessional behaviour by civilian contractors reflects poorly on the wider military and political efforts being conducted to increase stability and security by all international forces.

The inability of various authoritative agencies to effectively monitor or police the behaviour of privately contracted civilians has been shown to be problematic.

⁴⁰ UN General Assembly, A/HRC/10/14/Add.1, 27 February 2009, pp. 13-14.

⁴¹ Cotton, p. 25; And Chapman, who in 2010, describes PMCs as continuing to operate as legal 'Untouchables' at, p. 1079

⁴² By District Court Judge Ricardo Urbina: U.S. v. Slough, No. 09-0360, 2009 WL 51173785 (D.D.C. Dec. 31, 2009). At: http://www.wcl.american.edu/org/lpb/documents/M_Brickell_CEJA.pdf?rd=1. Accessed: 07/02/11

⁴³ Civilian Extraterritorial Jurisdiction Act of 2010, S. 2979, 111th. Cong. (2010).

⁴⁴ CEJA (2010), S. 2979

Accompanying and exacerbating this, ineffective government agency oversight of the contracts (and therefore the contractors) themselves has thrown up further difficulties. These have prevented contracted defence and security objectives from being clearly realised in both Iraq and Afghanistan.⁴⁵ As one reason given to public citizens for the widespread introduction of private military contractors was an increase in military efficiency, the fact that this has not occurred indicates some manner of control deficit.

As early as 2005, the US Government Accountability Office (GAO) had identified an increasing interest by members of Congress in the use of private security providers in Iraq.⁴⁶ Following this, they made several pertinent observations. First, agencies and reconstruction contractors made extensive use of private contractors because the provision of security for these organisations was not part of the US military's stated mission. Second, despite the significant role of private security providers play, none of the principle agencies responsible for reconstruction had complete data on PSC use. Finally, that the relationship between the US military and the PMCs is based on cooperation and not control.⁴⁷ These have generated a further disconnect between the citizen (and their elected officials) and oversight of their state's private military activities.

As covered earlier, the use and control of public military force is partly constrained and overseen by a civilian engagement in regulatory processes and standards democratically decided upon. However, widespread difficulty in finding suitable individual PMCs for employment in Iraq has resulted in the GAO identifying *no* US or international standard that establishes qualifications, and therefore standards of quality, for private military or security providers. Subsequently, in Iraq these have been sourced from diverse backgrounds and include nationals from the US, UK, South

⁴⁵ GAO. *Iraq and Afghanistan*, GAO-11-1, October 2010, p. 1

⁴⁶ The GAO has also noted that contractors have been involved in every major US military operation since the 1991 Gulf War. In GAO-10-551T, March 17, 2010, p. 3

⁴⁷ GAO, *Rebuilding Iraq: Actions Needed to Improve the Use of Private Security Providers*. GAO-05-737, Washington DC, July 28, 2005. In GAO-06-865T, p. 1

Africa, Nepal, Sri Lanka, Fiji, and include Kurds and Arabs from Iraq.⁴⁸ It would appear to be inviting unmitigated risk to permit such divergent contractor elements to provide essential security services, in the absence of any publically agreed and overseen standards of service or conduct.

Difficulty in sourcing uniformly standardised private military and security personnel has also been found to extend to the consistent oversight of such actors by their direct employers, such as the DoD. After the Nisour Square incident the DoD and the US Department of State had taken some action to improve oversight of PSCs in Iraq by establishing an Armed Contractor Oversight Division. This provided guidance related to PMC use and made military units more responsible in terms of contract management, incident reporting and investigation. The DoD incorporated these measures into senior military staff and unit training programs and exercises but they did not reflect the increased PMC oversight responsibilities and organisational structures established after the 2007 incident. Accordingly, military units were not aware of or trained on how to carry out these augmented duties resulting in deficient performance returns. Additionally, while the DoD had increased the number of personnel devoted to contract oversight, these were shifted from existing oversight duties elsewhere and did not therefore, effect an overall increase in efficient contract monitoring.⁴⁹ Once again, the ability of the principal (i.e. the citizenry of either the US, Iraq, Afghanistan, or any other constituent) to constructively engage in their state's affairs is enfeebled by diminished regulatory control of their agents. This, in preceding chapters, has been shown to be a hazardous path.

The US Congress had sought to increase oversight of government contracts by monitoring performance through, among others, the National Defense Authorization Act for Fiscal Year 2008 (NDAA for FY2008). This directed the DoD, Department of

⁴⁸ GAO-06-865T, p. 5

⁴⁹ GAO-08-966, p. 4

State (DoS), and USAID to sign a memorandum of understanding (MOU) regarding their contracted activities in Afghanistan and Iraq. It included maintaining common databases of information on security contracts and the contracted personnel. The system of record for the three agencies statutorily required information was designated the Synchronized Predeployment and Operational Tracker (SPOT). Passing the NDAA for FY2010 expanded the requirements to include grants, cooperative agreements, and their associated personnel. The databases were to provide and track information on, at a minimum: a brief description of the contract, its total value and its competitiveness, numbers of contractors employed, their functions, and the number killed or wounded. Amendments to the Acts also required reporting on criminal acts committed by or against contractors. Using the SPOT information, it was/is the responsibility of the US Government Accountability Office (GAO) to review and report on the performance of the DoD, DoS, and USAID contracts.⁵⁰

It is the current determination of the GAO (as of October 2010) that the SPOT system is an unreliable instrument for tracking the data required by statute and therefore cannot be said to be an effective mechanism for informing a competent review and report. This has occurred through several means. An inability to assess the respective information needs ahead of time, resulting from disagreement by the involved agencies over how the system was to be implemented, has seen contractors supplying information to their parent agency who then submitted it to SPOT. The GAO compared this data to their other available sources and found that caution should be exercised when using agency-supplied data on contractor personnel to draw conclusions about either the actual number in Iraq and Afghanistan for any given time period, or the trends implied. The information on numbers of private military contractors killed or wounded, for example, given by DoS and USAID could not be independently verified and the

⁵⁰ GAO-11-1, *Iraq and Afghanistan*, October 2010, pp. 2-6.

DoD did not collect, and so could not supply, data.⁵¹ This reflects similar observations recorded above about the true number of civilians actually involved in military operations in Iraq.

The untracked use of private military contractors of various nationalities in the two conflicts has also proved to be troublesome for accurate Congressional reporting.⁵² USAID and DoS agency-specific policies originally limited the extent to which information on local national personnel was entered into SPOT, in line with their own implementation of the system. USAID's April 2009 contract policy only specified that contractor personnel deployed to Iraq must be registered. The policy specifically excluded Iraqi nationals and entities being recorded in the SPOT system. It was not until July 2010 that they directed that their private contractors working in Afghanistan be accounted for. Separate procedures for Afghan nationals had not been developed as of September 2010. This has resulted in information on local nationals and USAID contracts in both Iraq and Afghanistan not being diligently recorded. DoS policy requires that US and third country nationals working under grants must be entered into SPOT but GAO was informed by State officials that agency staff can use their discretion to determine whether this actually occurs for local nationals.⁵³

Further practical impediments have been encountered by agencies in using the SPOT system to track locally contracted personnel and who may or may not be armed. Many are working in remote locations and the numbers can fluctuate daily. DoD officials in Iraq and Afghanistan have indicated that this is particularly true for construction projects, where season and stages of build can affect the total number at work. One Afghan project was reported as having anywhere between 600 and 1,200 (the number carrying unauthorised arms is unclear) and it was sometimes weeks before the

⁵¹ GAO-11-1 p. 4

⁵² GAO-09-538, p. 1

⁵³ GAO-11-1, p. 8

DoD was notified of contractors no longer working. Remoteness and the attendant security implications has also hindered US government official's ability to verify data.⁵⁴

Of particular relevance to the above section on the difficulties surrounding the legal control of private military contractors, is a continuing issue of weapon authorisation as required by a SPOT data input field. This identifies contractor personnel who have been authorised to carry a firearm. The armed security contractors' employer is required to supply this information in accordance with a DoD process to register and account for personnel in each country. However, USAID officials in Iraq indicate that security employees working under the agencies contracts receive authorisation from the Iraqi government, not the DoD, and are therefore not identified in SPOT as having a valid weapons authorisation. Further, some contracted security personnel are not authorised to carry weapons and would not be included in a count using this method. Conversely, some contractors not performing security functions have been given authorisation to carry weapons for personal protection and therefore would be included in the count.⁵⁵

Given that there are significant difficulties in the methodology for identifying civilian personnel performing security functions, it is not surprising that there are fluctuations in the numbers of privately contractors being reported. This is additionally evidenced by an analysis of the SPOT data that indicated no more than 4,309 personnel were involved in such duties for the DoD in Afghanistan during the second quarter FY2010. DoD officials overseeing the armed contractors estimated that the total number of DoD security contractors in Afghanistan for the same period was around 17,500.⁵⁶

In the face of substantial misgivings about the US government's own recording of private military actors in the Iraq and Afghan operations - and likely elsewhere, it

⁵⁴ *Ibid.*, p. 9

⁵⁵ GAO-11-1, p. 12

⁵⁶ *Ibid.*, p. 12

would be difficult for any assessor to achieve an accurate picture of what is actually going on or if it is being successfully achieved by the civilian military contractors. As accurate information is a fundamental normative tool for democratic decision making by a state's citizens and their elected representatives, it is concerning that this important ingredient is largely missing or seriously corrupted.

As mentioned earlier, the modern state ostensibly retains the superior monopoly authority when holding its citizens and agents accountable for crimes committed and any lessening of this monopoly intrudes into the sovereign power of the state. The public audit of state security functions and goods being one characteristic. However, opposing this is the idea that there has never been a clear division between public and private functions of government and therefore claims about sovereignty loss are unsupported.⁵⁷ This would require a determination that privatised security cannot deliver public societal benefits and causes societal harm. This assertion is problematic when divisional lines between 'the Blackwater guard, an unmanned aerial drone operator and a weapons logistical technician are impossible to materially differentiate within the dimension of public and private functions'.⁵⁸ Whichever proves to be the stronger case, some manner of effective legislative and regulatory control is still required to determine authority and accountability of all agents if professional military, civil and international legal standards are to be met.

There has been resistance to this idea by those who would argue that the PMC operates in a market place that has built-in incentives that obviate the risk associated with control loss. By forcing PMCs into an adversarial relationship with other competing PMCs for states' business, the market would provide the necessary incentive for PMCs themselves to act as diligent agents of the state. No special bureaucracy or military hierarchy is required to enforce what the market demands. PMC advocates have

⁵⁷ Sullivan, pp. 861-862.

⁵⁸ *Ibid*, pp. 861-865.

indicated that the PMC market's ability to socialise its members toward compliance promotes professional standards and voluntary codes of conduct. They argue that this competitive market paradigm is sufficient to protect states from behavioural abnormalities by PMCs.⁵⁹ The accounts of the Ancient Greeks, early privateers, Italian *condottieri*, and African mercenaries would suggest that this is improbable.

The value of a market-oriented private military force is not without importance to governments; rapid deployment capability, advanced technical expertise, and the potential for fiscal parsimony among the goods being offered.⁶⁰ However, this narrow market-control approach is disputed because history does not necessarily record this type of optimism as universally warranted. The Ancient Greeks originally had few constraints upon their military markets but citizens eventually chose to introduce them, garnishing greater civil and security goods. Upon losing them they returned to anarchic security conditions. The early Italian Renaissance was very much a free-market economy and in that paradigm, openly competing military contractors rapidly became the primary security apparatus of economically belligerent city-states. This did not result in greater security because *condottieri* objectives were not generally aligned with their employers – the former seeking only profit and the latter security and profit, which ended in a principal/agent inversion. Consequently, Italian city-states and their citizens were obliged to suffer egregious usury and injury by their own privatised military agents. This because the market could not act in a fashion that restricted private military self interest as the state force monopoly was in the hands of the contractor/s. In the absence of effective public oversight and punitive measures, contemporary market forces alone cannot be relied upon to fully enable public control. This concern continues

⁵⁹ McCoy, Katherine E. 'Beyond Civil-Military Relations: Reflections on Civilian Control of a Private, Multinational Workforce.' *Armed Forces and Society*, Vol. 36, No. 4 (2010), p. 675

⁶⁰ *Ibid*, p. 678

to occupy scholars but is still refuted by PMCs and their lobbyists who continue to argue for market control.⁶¹

It must also be observed that the current market forces that are operative do not encourage greater professional control by PMCs over their employees. To illustrate, in accordance with market practices a cost saving measure is to jettison the bureaucratic structures that would otherwise enable more direct control over their workforce.⁶² This may benefit the fiscal requirements of government clients but it does not always mean greater contractor control is achieved at the workplace. For example, reports by the GAO and DoD have noted the inability of PMCs to provide adequate discipline and professionalism in the contractor force.⁶³ In particular, an investigation of the PMC ArmorGroup, who were tasked to protect the US Embassy in Kabul, found an environment of 'serious and continual hazing, public drunkenness and nudity, and failure of workers to perform basic duties or of supervisors to exercise leadership'.⁶⁴ This highlights the type of conduct that is *not* (generally) tolerated in a state's public military force held to account by citizen audit and normative professional military standards. The regular appearance of this otherwise intolerable behaviour in PMCs indicates serious control slippage.

Such events illustrate that practical complications also exist, outside of the regulatory and legislative, in sustaining public control of civilian military contractors operating in international conflicts. The current inability of domestic and international regulatory mechanisms to control or punish private military contractors for transgressions is insidious. A cavalier approach to provision of private military functions thrusts civilian contractors into state's military roles, without the oversight

⁶¹ McCoy, p. 675

⁶² *Ibid*, p. 680

⁶³ GAO-08-966, July 2008; GAO-09-538T, April 1 2009; GAO-10-472, March 2010; GAO-10-551T, March 17 2010; GAO-10-833, July 2010 ; US Department of Defense, Taguba Report, January 2004. Inspector General, Department of Defense Report, August 2006.

⁶⁴ Program on Government Oversight (POGO), letter to Secretary of State Hilary Clinton, September 1 2009, p. 8. In McCoy, p. 678

and protection they, the public, and the international community reasonably expect. It undermines the professional military standards that properly informed and therefore properly constituted regulation oversees. It bodes ill for the normative controls that Western democracies have developed to ensure citizens may exercise their public rights to engage with their state's military affairs. Uncontrollable privatised military invites an operational disconnect between the state, its military agents, and its' citizens. This opens a path for the degradation of state and therefore citizen authority that, historically, has often resulted in public security and defence goods being eroded.

Conclusion

This work has argued that the widespread use of private military by organised political groupings is either perilous, preserving, or profitable to civil society depending upon the amount of principal control exercised over the contracts and the contracted, regardless of paradigm.

Chapter 1 presented an underlay of normative and ethical issues relevant to contemporary democratic states and the arrangement of their civil and military affairs. This provided instruction as to how and why contemporary states and their constituents have come to expect particular standards from their defence and security providers. These accepted standards are generally adhered to by states' monopoly armed military force that are, or have nominally been since 1648, traditionally comprised of a state's citizens. Public and democratic processes of state now allow for direction of these forces by an engaged citizen electorate. Deviation from the accepted norms or regulatory regimes by public military force is penalised, also through these same processes. The sudden large-scale introduction of private military actors into the arena of public military function has presented challenges to this control paradigm. Such obstacles as agent description and legal status, employer status and responsibility, taxonomy and accountability, have so far confounded attempts to socialise private militaries' use in a fashion analogous to publically controlled armed forces. Current domestic laws, international laws and protocols, and military codes have also been shown to be inadequate in controlling these private agents in the way that they do public forces operating in an international environment.

This is no new phenomenon and developing control elements can be individually discerned in various historic paradigms. The examination here, of private military force from Western history, has given exemplars of their successes and failures.

It is these exemplar case studies, born of various ages' experience with privatised military, that have provided much of the backbone to the modern, normative expectations for civil/military relations. Given that, it would be prudent to garner wisdom from their lessons.

Beginning with the Ancient Greeks, the bedrock of Western normative traditions, it has been shown that mercenaries eventually supplanted the traditional citizen-soldier as Greek political, social and economic landscapes evolved. The transformation was not to their long-term civil benefit. The transition from aristocratic oligarchies to tyrannical democracies was aided by the soldier who counted himself as a citizen first and mercenary adventurer second. As citizens' importance to community security increased, so did an awareness of their political power. The involvement of the citizen in the political processes of state thereby became instrumental in controlling their military actors. This helped cement early Greek communal security and reached its peak during their Classical Age. A move away from direct citizen engagement with their own military affairs encouraged a proliferation of mercenarism and the export of the emergent professional mercenary whose motivations were not necessarily aligned with his community. The unemployment of the same professional also became problematic, as it also did later in the early renaissance. A military export-market free-for-all ensued that gradually eroded Greek military supremacy and ultimately contributed to regional chaos. As such, this should provide a warning against indiscriminate, contemporary private military use. The efforts of the Spartans over the 10,000 showed that even rudimentary control of private military forces abroad, by state punitive measures, was a perceptive political manoeuvre and should still serve to inform the current private military international operating environment. It additionally indicates what may transpire should political principals fail to be so informed.

The Italian *condottieri* period was the culmination of several hundred years of changing international relations, political, social and military evolutions. Again, the individual amateur soldier sought a professional alternative to the traditional military obligations when fiscal opportunities provided by these evolutions, occurred. Initially, mostly foreign mercenary leaders formed large private military companies to replace the disinterested and inadequate civilian levies. These roving marauders, being in a position of considerable coercive power, plundered much of the Italian peninsula. As time progressed the foreign mercenaries were replaced by a local variety of private military actor who also referenced no higher authority than the successful application of military force. An early opportunity to convene a unified Italian military authority was squandered and subsequently, competing mercenary armies became the norm in security and defence measures for the early Italian Renaissance city-states and communities. This removed civilian participation from their communities' security processes. Italian political principals and citizens seem to have made an assumption that reliance on contracts alone to engage and disengage the services of their private military agents would be sufficient to influence their behaviour. In the absence of any superior coercive authority, the *condottieri* were able to manipulate their principals into a subservient position. This saw citizens inclusion in political and administrative functions reduced to supplying their extortionist's increasing fiscal demands. These circumstances eventually cost the Italians their territorial integrity. The inability of modern civilian military contractors to be effectively coerced by civilian principals through contract or regulation, is likely to see an eventual repeat of this principle/agent reversal if allowed to proceed unchecked.

Early privateering suffered from a rather leisurely developmental process and the retarded regulatory approach often led to monarchs' international relations with friends being aggravated. Concurrent to this was the substantial fiscal rewards and

defence benefits that privateering brought immature states in the absence of meaningful public navies. As citizens became more widely involved in the broader economic facilitation of the privateering industry, albeit in an often fraudulent manner, administrative interest in administration and regulation also increased. This served to greatly enhance the overall prestige and efficacy of, particularly, the Elizabethan maritime facility. Later, privateering played an important role in the financial development of American colonies and their rapid administrative adjustment to frontier conditions was a determining factor in their Revolution's successful private maritime offensive. As such, the privateering period shows that certain economic, security, and defence situations can be assertively managed with well controlled and motivated private force when a state's public-military response is inhibited. Engaged and enthusiastic citizens and their states were the primary beneficiaries of this positive, international private military deployment. These successes show that private military offensive models have merit and should be of particular interest to those looking to achieve a satisfactory solution to the current international piracy problem.

Mercenaries' return in the second half of the twentieth century ultimately proved to be cathartic. Their appearance in the wake of African post-colonial withdrawals was initially a scourge on African internal security and civil order. Cold War powers' ideological agendas were covertly and brutally animated by unsavoury and largely uncontrollable, self-interested, and unprofessional private military agents. Civilian participation in the contracts or contracted goods was non-existent, from both a principal and agent perspective. The mercenaries' predations ultimately showed that there was a market for fully professional private military companies in delicate international security operations. The end of the Cold War allowed the personnel and materiel for such enterprises to become available at a critical time for African intra-state affairs. In the absence of a credible international military or political response to African

humanitarian crises, a forerunner of today's private military companies enabled a limited but satisfactory military solution. This was achieved by careful private military agent attention to civilians and their participation in civil security, and to executive economic objectives. Lack of international engagement with the effort saw it degraded. It did however, spark a renaissance of interest in the utility of professional private military. This has developed largely unfettered by international regulation or overt approval. Antiquated attitudes, resulting from archaic taxonomy and regulation, continue to negatively influence wide acceptance. This has seen private military companies excluded from overt combat solutions to complex international contingency and security operations, when their open and regulated contribution could be significant.

The twenty-first century has witnessed the burgeoning integration of private security contractors with states' public military formations. The headlong rush to privatise military functions has not taken into account the many lessons from history and continues in an ad-hoc regulatory fashion. The 2003 Iraq War has supplied the most recent examples of the types of difficulties that this dilatory approach to regulatory control generates: the ability of an executive authority to engage private military actors without the representative oversight and judicial protections that is a normative right of citizens; the impotence of international and domestic laws to apply punitive measures in the face of contractor malfeasance; and the friction between the codes and practices of public militaries and contractor behaviour. Unaddressed, these are the ingredients for a repeat of history's bitter lessons.

The ongoing ability of private military actors to seemingly avoid legal responsibility for transgressions committed while operating in international conflicts is worrisome. The constraints developed over millennia of experience with private military force have resulted in the protections modern Western society now employs to restrain public militaries. Citizen engagement with the democratic and judicial, public

processes of state are now the agreed methods by which a contemporary, professional military is controlled. Modern private military actors have been shown to be beyond these normative mechanisms when operating in an international environment. These mechanisms materially represent Hobbes' invisible social contract between a modern citizen, their state, and their monopoly military apparatus. They are comparable to contract agreements or licence terms found elsewhere that are usually subject to rigorous enforcement - variously stipulating the extent of principal and agent rights and the duties, rewards and penalties. Inattention to these details constitutes an imprecise contractual environment and therefore will likely herald an unsatisfactory outcome for one or more of the contract participants. Historically, it has been the ordinary citizen who is least protected and invariably experiences the most dissatisfaction.

Given the lack of regulatory management that is currently enabled, the hasty replacement of public state military functions by private contractors appears to have been perhaps not ill conceived but certainly suffering from poor executive control. The conception was premised upon a civilian assumption that the transposition of private military agents directly into the publicly controlled international domain of modern military operations would see oversight mechanisms, developed from long experience, continue to operate in an analogous fashion. This has been shown to be a false and dangerous assumption.

Open-forum consideration must be given to the core issues and historical lessons to ensure citizens are aware that contemporary private military companies and contractors must operate under full and effective public oversight, if they are to be successfully controlled.

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